

Supreme Court, U. S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. **78-253**

NOLAN ESTES, ET AL,

Petitioners,

versus

**METROPOLITAN BRANCHES OF THE
DALLAS N.A.A.C.P., ET AL,**

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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Petitioners, the members of the Board of Trustees of the Dallas Independent School District and its General Superintendent (Dallas Independent School District or DISD), pray that writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 21, 1978. The names and identities of Petitioners and the many parties Respondent, as well as Amicus Curiae, are set forth in Appendix "A".

OPINIONS BELOW

The opinions, orders and judgment of the District Court are set forth in Appendix "B" (pages 4a-129a) and are reported in part at 412 F.Supp. 1192. The opinion of the Court of Appeals is set forth in Appendix "C" (pages 130a-146a) and is reported at 572 F.2d 1010. Denial by the Court of Appeals of Petitions for Rehearing is not reported and is set forth in Appendix "D" (pages 146a-147a). Petitioners' Motion for Stay of Mandate was filed May 26, 1978, in the Court of Appeals. As of the date of printing of this petition on August 10, 1978, said Motion for Stay of Mandate had not been acted on by the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals was entered on April 21, 1978. A timely Petition for Rehearing was denied on May 22, 1978. This petition for certiorari was filed within 90 days from that date. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Among the issues before the Courts below was the constitutionality of the remedy formulated by the District Court to eliminate the vestiges of a state-imposed dual school system in the large urban school system described in this petition and by the Courts below. The question presented is:

Whether as to such school systems, the elimination of all one-race schools is the controlling factor to be

considered in determining whether a remedy formulated by the District Court is consistent with the Equal Protection Clause and this Court's decisions in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, and *Milliken v. Bradley*, 433 U.S. 267 (*Milliken II*).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent parts as follows:

"... nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Dallas Independent School District and the federal courts have been on intimate terms in school desegregation matters since 1955 immediately following *Brown II*. The instant action is not the first but is a second and separate Dallas school desegregation case. At the time the instant action was filed there was also pending in the United States District Court for the Northern District of Texas an existing class action desegregation proceedings, in which continuing jurisdiction is exercised by the District Court and in

which the various proceedings involving desegregation of the DISD have been determined.¹

This second action was brought in the District Court against DISD on October 6, 1970, by both Blacks and persons alleging to be Chicanos asserting de jure segregation of each class and seeking the establishment of a unitary school system for each class. These original Plaintiffs (Respondent-Plaintiffs) invoked the jurisdiction of the District Court pursuant to Title 28 U.S.C. Section 1331 alleging this action arises under the Fourteenth Amendment and the amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand (\$10,000.00) Dollars and pursuant to Title 28 U.S.C. Sections 1343(3) and (4), alleging this to be a civil action seeking injunctive relief to end denials of equal protection of the law and alleging that this action was further filed pursuant to the provisions of 42 U.S.C. Section 1981, 1983, 1988, 2000c-8 and 2000d.

On June 3, 1971, in a decision entered as a result of an appeal from an order denying the Respondent-Plaintiffs' first motion for preliminary injunction, the Court of Appeals directed the District Court to make full written findings of fact and conclusions of law on

¹ The various proceedings in that action in part may be found at *Bell v. Rippey*, 133 F.Supp. 811 (N.D.Tex., 1955); *Brown v. Rippey*, 233 F.2d 793 (5th Cir., 1956), *cert. denied*, 352 U.S. 878; *Bell v. Rippey*, 146 F.Supp. 485 (N.D.Tex., 1956); *Borders v. Rippey*, 247 F.2d 268 (5th Cir., 1957); *Rippey v. Borders*, 250 F.2d 690 (5th Cir., 1957); *Boson v. Rippey*, 275 F.2d 850 (5th Cir., 1960); *Borders v. Rippey*, 184 F.Supp. 402 (N.D.Tex., 1960); *Boson v. Rippey*, 285 F.2d 43 (5th Cir., 1960); *Borders v. Rippey*, 188 F.Supp. 231 (N.D.Tex., 1960); *Borders v. Rippey*, 195 F.Supp. 732 (N.D.Tex., 1961); *Britton v. Folsom*, 348 F.2d 158 (5th Cir., 1965); and *Britton v. Folsom*, 350 F.2d 1022 (5th Cir., 1965).

the merits of this action in the light of principles enunciated in *Swann. Tasby v. Estes*, 444 F.2d 124 (5th Cir., 1971). The District Court did so in August, 1971. The Respondent-Plaintiffs again appealed.

On July 23, 1975, the Court of Appeals, among other things, vacated the student assignment plan formulated by the District Court and remanded with directions to formulate elementary and secondary student assignment plans which comport with the directives of the Supreme Court and the July 23, 1975, Opinion-Mandate of the Court of Appeals. *Tasby v. Estes*, 517 F.2d 92 (5th Cir., 1975), *cert. denied*, 423 U.S. 939.

On October 25, 1975, and over Petitioners' objections, the District Court allowed the Metropolitan Branches of the Dallas N.A.A.C.P. (Respondent-NAACP) to intervene.

On February 2, 1976, hearings on fashioning a student assignment plan once again commenced in the District Court. These hearings culminated in the District Court's April 7, 1976, Final Order, as supplemented, containing the remedy formulated by the District Court and here in question.

On December 11, 1976, the voters in DISD voted in favor of authorizing bonds in the amount of \$80,000,000.00 for the purpose of the construction and equipment of school buildings in DISD and the purchase of necessary sites therefor. \$30,000,000.00 of these bonds have been sold to date and committed to this purpose. (T. 5, 6, 7, II Appeal)

Both Courts below have correctly recognized the urban metropolitan nature of DISD and that DISD is not a small rural school system but is the eighth largest urban school district in the United States.

The District Court by order of July 16, 1971, directed that the Mexican-American student be considered as a separate ethnic group and as a "minority" for purposes of a desegregation plan. Hence in DISD the problem exists of formulating a tri-ethnic remedy and the phrase "Anglo" is used in lieu of "white" under such circumstances. This circumstance alone magnifies the problem of formulating a remedy in a *minority Anglo* system.

There is no actual total population census of DISD. The boundaries of the City of Dallas and DISD are not coterminous. The population of the City of Dallas is 800,000 to 900,000. The ethnic composition of the total population of DISD, as distinguished from student enrollment, approximates the ethnic composition of the population of the City of Dallas which is estimated to be 25% or 30% black, 10% to 15% Chicano and the remainder Anglo. (V.I. 279, 405, 406) This is far different from the ethnic composition of the student population.

DISD contains approximately 351 square miles within the 900 square miles of Dallas County. From DISD's furthest northernmost point to its furthest southernmost point there is a distance of approximately 35 miles viewed from the northwest to the southeastern part of the district. It is about 25 miles from what is called the southwest quadrant in

Oak Cliff just below Hulcy Junior High School to the northernmost point near the Dallas County line. (V.I. 405)

The Court of Appeals has correctly recognized that in 1971 the DISD student body was 69% Anglo and that in 1975 it was 41.1% Anglo, 44.5% Black, 13.4% Mexican-American and 1% "other." This Court is advised that as of March 11, 1978, the Anglo student body was 35.38%.

At the time of trial on February 2, 1976, DISD had lost approximately 40,000 Anglo students during the pendency of this second action. As the students become younger there is a decided drop in the numbers and percentage of Anglo students. (Deft. Exs. 13; 11, pp. 1, 2)

Petitioners estimate that in 1980 the percentage of Anglo enrollment will be 26% of the total school population as opposed to 41%, that Black enrollment will be 57% as opposed to 44.5%, and that Mexican-American enrollment will be 18% of the total student enrollment as opposed to 13.4%. (V.I. 67, 68)

In addition to being faced with the problem of fashioning a remedy for an ever increasing minority Anglo school system, the District Court also had the problem of preserving naturally integrated areas and schools which had naturally integrated due to changing housing patterns. All of the plans before the Court submitted by all parties and Amicus Curiae recognized and accepted the concept that there was no reason to disturb already desegregated neighborhood

schools and each plan proposed to leave certain areas and schools alone as those areas and schools were naturally integrated. (V.I, 104, 105; Hall's Ex. 5, pp. 14-19; V.IV, 15, 16, 19; Pl. Ex. 16, pp. 9, 41; V.III, 241-242, 259, 330, 355, 406, 410)

Further the District Court had to consider the location within the DISD of these naturally integrated areas and schools in relationship to the areas containing the remaining predominantly Anglo students and the areas containing predominantly Mexican-American or Black enrollment. The area containing the only remaining predominantly Anglo students lies generally in a strip along the north and certain eastern portions of the system. The predominantly Mexican-American or Black students reside to the south and southeast in areas distant from the predominantly Anglo students. Separating the remaining predominantly Anglo students and the predominantly Mexican-American or Black students are areas containing large parts of the naturally integrated areas and schools. (Deft. Ex. 2, 3; V.I, 77, 78, 79, 80, 81)

Respondent-Plaintiffs have recognized the problems of the District Court in fashioning the remedy in question. One of their student assignment plans submitted to the District Court states the reason for leaving one-race schools. In three separate places that plan states: (Pl. Ex. 16, pp. 34, 36, 38; V. III, 377)

"Distance from the majority white areas, capacity of schools, DISD enrollment patterns and generally good physical facilities were factors resulting in South Oak Cliff retaining

its present student assignment patterns."
(Emphasis ours)

The "South Oak Cliff" referred to is the area now referred to as East Oak Cliff in the District Court's Final Order. Thus by written proposal and testimony Respondent-Plaintiffs admit that the long distance of the East Oak Cliff Subdistrict from areas containing Anglo students is so great that the continued existence of Black one-race schools in East Oak Cliff is justified. (V.III, 378, 379); that the "enrollment patterns" in DISD, i.e., an ever expanding scholastic population in East Oak Cliff, the numbers of Black students and the numbers of Anglo students in DISD and the absence of Anglo student growth in DISD, further justify the continued existence of Black one-race schools in East Oak Cliff. (V.III, 379-381, 407, 408)

Respondent-Plaintiffs in the District Court by motions filed on April 2, 1976, and April 5, 1976, sought an award of attorneys' fees in this action under Section 718 of the Education Amendments Act of 1972 on the theory that they were the "prevailing party." On April 30, 1976, Respondent-Plaintiffs filed a brief in support of their motion for attorneys' fees which contained the following statement: (5/11/76 S.R. 1, p. 4)

"Finally, the plan adopted by the Court in its order of March 10, 1976, together with Supplemental Opinion and Orders dated April 7, 1976, and April 15, 1976 adopt and/or incorporate almost every precept proposed by plaintiffs for student assignment and non-student assignment features of the remedy."
(Emphasis ours)

The District Court agreed and awarded attorneys' fees to Respondent-Plaintiffs.

Throughout Respondent-NAACP has insisted that the existence of some one-race schools invalidates the student assignment portion of the remedy. However, Respondent-NAACP publicly admits it does not have a solution. In a newspaper interview this public admission was made by the attorney of record for the Respondent-NAACP:

"And even the NAACP admits that it is having some trouble finding a way to break up the all-black nature of the subdistrict. 'If I knew the answer, I'd give it to you,' says NAACP attorney E. Brice Cunningham. 'I admit that we have not yet come up with an alternative to some all-black schools. But we will still challenge it in court.' " Dallas Morning News, August 15, 1976, at 1, col. 2.

Respondent-NAACP demands racial balance in each school and year-by-year adjustments in such quota assignments. The NAACP plan states:

"(a) Every school should have a *racial balance* comparable to the *racial balance* in the District, which will not deviate more than Ten Percent (10%) up or down." (Emphasis ours) (NAACP Ex. 2, p. 7)

* * * *

"2. The first magnitude of desegregation and the attaining of an Unitary School System

should be to *achieve a racial balance of black and white* students in each school and then follow through with the integration of *other minorities* into the system." (Emphasis ours) (NAACP Ex. 2, p. 7)

* * * *

"5. Any set plan should have written into it automatic mechanisms for change based upon conditions which may arise in the community." (NAACP Ex. 2, p. 7)

* * * *

"13. Monitoring procedures are to be so specified that assignment adjustments will be acted upon when trends of racial changes are noted. These procedures are to be made specific with respect to degrees of change and timing of remedial actions to be taken." (NAACP Ex. 2, p. 8)

The Judge of the District Court has presided in this second case from its beginning. From its March 10, 1976, Opinion and Order it is obvious that the District Court has recognized and considered all the many complex factors involved in fashioning a desegregation remedy for DISD. Over the strenuous objections of DISD, the District Court anticipated the subsequent June 27, 1977, decision of the Supreme Court in *Milliken II* and ordered comprehensive non-student assignment provisions in the remedy. As used, non-student assignment provisions involve judicial remedies in desegregation proceedings going beyond student assignment plans and pertaining to (a) the

operation and management of the business and affairs of DISD, and (b) the education, curriculum and program aspects of DISD.² Summary examples of the non-student assignment requirements included in the District Court's remedy are set out in Appendix "D".

The Court of Appeals appears to recognize the careful study and consideration that the District Court had given the case and the many complex factors involved in fashioning the remedy. Nevertheless, the Court of Appeals considered the number of one-race schools as controlling and remanded the case to the District Court for the formulation of a new student assignment plan and for findings to justify the maintenance of any one-race schools that may be a part of that plan.

REASONS FOR GRANTING THE WRIT

1. The Court Below Has Decided A Federal Question In A Way In Conflict With This Court's Decision In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

Among the issues before the Courts below was the constitutionality of the remedy formulated by the District Court to eliminate the vestiges of a state-imposed dual school system in a large urban school system and

² Nothing contained in this petition is to be construed as a waiver by DISD of its right on remand to object to the introduction of all evidence and to all parts of any plan or proposal as might pertain to non-student assignment matters and to object to the inclusion of non-student assignment provisions in any remedial order and DISD specifically reserves its right to so object.

in particular such a school system that is now a *minority Anglo* system with an ever decreasing percentage of Anglo students that requires a tri-ethnic remedy and that has been the object of ongoing litigation to formulate a remedy since *Brown II*. It is obvious from the directions given the District Court on remand that the Court of Appeals considers the number of one-race schools to be the controlling criteria for determining the appropriateness of a remedy for such school systems. This is not what this Court said concerning one-race schools in *Swann*. This is not what this Court in effect construed *Swann* to mean in *Milliken II*.

This one-race school criteria seized on by the Court of Appeals is an example of how *Green v. New Kent County*³ thinking can bring lower courts to an erroneous interpretation of *Swann* in cases involving these large urban school systems. In the instant case we are dealing with a system of some 800,000 to 900,000 persons, operating some 183 school buildings with approximately 140,000 students of whom 41.1% were Anglo, 44.5% were Black and 13.4% were Mexican-American. In *Green* the school system operated only two schools in a rural county of some 4,500 population. One was a white combined elementary and high school and one was a Negro combined elementary and high school. The school system served approximately 1,300 pupils, 740 of whom were Negro and 550 of whom were white. Facts and conditions are not the same. It is one thing to think in terms of no one-race schools in New Kent County, Virginia, with only two schools in that entire rural system, but to focus on such an overly simplistic approach in considering a

³ *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968)

remedy for this large urban system has brought the Court below to an erroneous construction of *Swann* and to a decision in conflict with *Swann* when read in its entirety.

A national educational crisis exists in such large urban school systems because some federal courts refuse to come to grips with the fact that *Swann* must be interpreted in light of the urban condition as it exists in such school systems. The District Court was one federal court that did recognize that *Swann* must be interpreted in light of the urban condition in such school systems. The District Court's March 10, 1976, Opinion and Order well states the anguish and agony that district courts must go through in formulating remedies in such school systems. In the District Court's language in part:

"In this complex and ever-changing area of the law, it is difficult if not impossible to discover hard and fast rules for the Court to follow."

* * * *

"... school districts are like fingerprints — each one is unique. Although the goal of a unitary, non-racial system is a constant, the method or plan for achieving that goal must be tailored to fit the particular school district involved. A plan that is successful in a district having a small student population or occupying a small area geographically, a rural district, a county-wide district, or a majority Anglo school district, will not necessarily be

successful in a large urban district such as the DISD." (Emphasis ours) 412 F.Supp. at 1195

Granted that the judicial goal must be the development of a decree that promises realistically to work and promises realistically to work now, it nevertheless defies all logic and common sense not to allow a district court to choose a plan that takes into account the urban condition in such school systems. Otherwise the judicial goal of a plan that promises realistically to work now in such school systems is reduced to a shambles.

The Court of Appeals has reached a decision in conflict with *Swann* and this Court is urged here to resolve the conflict in view of the difficulty that the nation's lower courts are having in finding a satisfactory solution to school desegregation matters in large urban school systems.

2. The Court Below Has Decided A Federal Question In A Way In Conflict With This Court's Decision in *Milliken v. Bradley*, 433 U.S. 267 (*Milliken II*).

The decision below does not refer to this Court's decision in *Milliken II*. Thus the decision below in effect interprets *Swann* to mean that the non-student assignment provisions included by the District Court in the remedial order in question, including remedial educational programs, are not to be considered as desegregation tools or techniques under *Swann*. The Court below has made a too limited reading of *Swann* in the light of this Court's decision in *Milliken II*. Con-

trary to *Milliken II*, the Court below has decided that certain remedial educational programs may not be considered as desegregation tools or techniques under *Swann*.

3. The Importance Of The Issue And The Need For Clarification.

A national educational crisis exists in urban areas and will continue unabated unless and until this Court addresses the matter of desegregation remedies in large urban school systems as described here. The issues here involved are especially important to such school systems and to their millions of school patrons throughout the nation. Cf. *S.E.C. v. United Benefit Life Insurance Company*, 387 U.S. 202, 207, where certiorari was granted because of the importance of the issue and the need for clarification.

If integrated school systems in large urban metropolitan centers are the true goal of groups such as the Respondent-Plaintiffs and Respondent-NAACP, then that goal becomes an impossibility when public education is required to exist under conditions that do not appeal to many school patrons. The constant and unrelenting uncertainty and pressure of never ending school desegregation litigation is a condition that does not appeal to many school patrons. When conditions exist that do not appeal to school patrons, they seek more satisfactory conditions elsewhere; some in the suburbs, some in private or church-related schools. The search for more satisfactory conditions elsewhere is not always related to a racial bias but to a family's sense of frustration with

conditions that decrease the total educational opportunity for one's child. One condition that decreases the total educational opportunity for one's child is constant desegregation litigation over the remedy and the resulting prospect of ever expanding busing in a large metropolitan area. Uncertainty destroys parents' patience and confidence. It is not just Anglos who become dissatisfied with these adverse conditions in urban school districts. Black families and Mexican-American families value education also; and they will leave as they can, just as Anglos leave as they can.

This case presents the Court the opportunity to address these matters and to make clear to the lower courts that *Swann* is to be interpreted in light of the facts of the urban condition as exist in school systems such as Dallas. If, in the words of Respondent-NAACP's counsel, the Respondent-NAACP has "... not yet come up with an alternative to some all-black schools," then the Court of Appeals should not read *Swann* to require the District Court to be wiser than the Respondent-NAACP.

Unless the District Court's realistic approach to such a school system is affirmed by this Court, then desegregation litigation involving such school systems will go on and on over the years and will end only at that point when these school systems become virtually all-black or virtually all-black and Mexican-American. Unitary these school systems may then be, but virtually all-black or all-black and Mexican-American they will be also.

Lower court interpretations of *Swann*, as in the Court below, create such dilemmas and uncertainties with respect to school systems such as Dallas that nothing is resolved. Such lower Court readings of *Swann* create such unfortunate social and economic circumstances in metropolitan cities that the results have become a national educational tragedy. All that now occurs under *Swann* with respect to school systems such as Dallas is constant district court hearings, appeals and remands. The District Court had a solution for a national problem. The Court of Appeals rejected this solution. Further word from this Court is needed.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: August 11, 1978

PROOF OF SERVICE

We, Warren Whitham and Mark Martin, Attorneys for Petitioners herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of August, 1978, we served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit upon the following Counsel for Respondents:

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and to the following Counsel for Amicus Curiae:

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by mailing same to such Counsel and Respondent pro se at their respective addresses and depositing the same in a United States mail box in an envelope properly addressed to such addresses with first class postage prepaid.

We further certify that all parties required to be served have been served.

Warren Whitham

Mark Martin

Attorneys for Petitioners

APPENDIX "A"

IDENTITY AND NAMES OF ALL PARTIES

Petitioners are the members of the Board of Trustees of the Dallas Independent School District and its General Superintendent. At the time of filing this Petition Bill C. Hunter, Sarah Haskins, Robert Medrano, Kathlyn Gilliam, Bradford N. Lapsley, Jill Foster, Harryette Ehrhardt, Robert L. Price and Gerald M. Stanglin are the Trustees of the Dallas Independent School District and Nolan Estes is its General Superintendent. Petitioners were Defendants in the District Court and Appellees and Cross-Appellants in the Court of Appeals.

The Respondent-Plaintiffs were the original Plaintiffs in the District Court and Appellants and Cross-Appellees in the Court of Appeals. The Respondent-Plaintiffs are Eddie Mitchell Tasby and Philip Wayne Tasby, by their parent and next friend, Sam Tasby; Evelyn Denise Lafayette and Darline Lafayette, by their parent and next friend, Ludie Ann Cobbin; John L. Morgan, Leon M. Morgan, Emanuel Morgan and Jacqueline Morgan, by their parent and next friend, Mary Jane Morgan; Jacqueline Denise Yarborough, Katherine Yvette Yarborough and Willie Jackson, by their parent and next friend, Bettye Jackson; Nelba Ann Crouch, Allen LaMeche and Danny O'Keefe, by Thelma Lee Crouch; Nettie Marie Cates, by her parent and next friend, Bobbie Lean Cobbin; Tony Jefferson, Beulah Jefferson, Arthur Jefferson, Yolanda Jefferson and Jacqueline Jefferson, by their parent and next friend, Ruth Jefferson; Ora Clara Woods and James

Edward Woods, by their parent and next friend, Helen Woods; Angela Medrano and Yolanda Medrano, by their parent and next friend, Richard Medrano; and the alleged class or classes they seek to represent in this action.

The Respondent-Intervenors are various parties who at various times have been permitted to intervene in these proceedings. The Respondent-Intervenors are:

1. Donald E. Curry, Gerald A. Van Winkle, Joe M. Gresham, Edmund S. Rouget and Robert A. Overton, Individually and as next friends for their children.

2. James T. Maxwell.

3. Donald Abercrombie, his wife, Helen Abercrombie, and their children, Donna and Donald; C. S. Ludwick, his wife, Ann Ludwick, and their children, Connie, Mark and Scott; Jerry Hamilton, his wife, Martha Hamilton, and their children, Pamela, Jeri and Patricia; Wayne Dickenson, his wife, Betty Dickenson, and their children, Delisa and Drew; Anthony Bascone, his wife, Rebecca Bascone, and their children, Kathy, Karen and Amy; R. D. Morgan, his wife, Janice Morgan, and their child, Carol; and R. H. Mason, his wife, Joyce Mason, and their children, Susan, Mark and William; also known collectively as "Oak Cliff Citizens."

4. Herman Bond, et ux, Individually and as next friend for his son, Steven Bond, as representative of the class of Oak Cliff residents in the Kimball-Carter-

South Oak Cliff School District areas and areas adjacent thereto in the City of Dallas.

5. The City of Dallas.

6. The Metropolitan Branches of the Dallas N.A.A.C.P., the John F. Kennedy Branch, the Oak Cliff Branch and the South Dallas Branch (Respondent-NAACP).

7. Dr. E. Thomas Strom, Charlotte Strom, Charles Pankey, Norma Pankey, Donald K. Boldt, Dan and Mary Ann Boyd, Dr. R. E. Buchanan, Dolly M. Buenting, Fannie Demery, A. Douglas and Jill Foster, Thomas E. and Denise Gray, Calvin R. Heath, Bobbie Hickson, Lloyd G. Jones, Ruth L. Keefer, Peggy L. Kirkland, Margaret Leo, Lou O'Reilly, Pat and Marilyn Patterson, Dottie Pennebaker, W. R. and Ann Swaney, Virginie Trousdale, Gordon C. Yates, Rev. Montie W. Stewart, D. B. Barksdale, Mrs. Buford T. Bird, Clyde and Nellie Blevins, Wilma E. Borchardt, Gene and Arlene Boyd, Nancy Ruth Cawthon, Bob Chaffin, Louise Clayton, Jack O. Davis, Mr. and Mrs. Pedro Guillen, Denise Jenkins, Mr. and Mrs. Paul Jones, Mr. A. A. Kerby, Mr. and Mrs. G. R. Langford, David Langton, Mr. and Mrs. Marlin E. Langton, Mrs. L. D. McManus, Buddy and Barbara Pettway, Olen and Wanda Weaver and Mr. and Mrs. H. A. Wells, a group of individuals residing in and having children attending schools in the Dallas Independent School District.

8. Ralph F. Brinegar, Wallace H. Savage, Evelyn T. Green, Craig Patton, Dr. John A. Ehrhardt, Richard L. Rodriguez and Alicia V. Rodriguez, Mr. and Mrs.

Salomon Aguilar, Marjorie M. Oliver, Mr. and Mrs. Ruben L. Hubbard, Robert L. Burns, Dr. Percy E. Luecke, Jr., Dale L. Ireland and Barbara J. Ireland, and Evelyn C. Dunsavage, Individuals residing in the Dallas Independent School District.

9. The Dallas Alliance and the Education Task Force of the Dallas Alliance, Amicus Curiae.

APPENDIX "B"

OPINION AND ORDER

Filed: Mar. 10, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY and PHILIP WAYNE
TASBY, by their parent and next friend, SAM TASBY,
ET AL

versus CA 3-4211-C

DR. NOLAN ESTES, GENERAL
SUPERINTENDENT, DALLAS INDEPENDENT
SCHOOL DISTRICT, ET AL

The task presented to this Court is to adopt and implement a desegregation plan for the Dallas Independent School District (DISD) which will finally conclude the tortured history of this litigation and which

will establish a unitary, nonracial system of public education in the DISD, as required by *Brown v. Board of Education*, 347 U.S. 483 (1954). This cause is here on remand from the Fifth Circuit Court of Appeals' decision of July 23, 1975,¹ which affirmed in part and reversed in part this Court's 1971 desegregation order. The Fifth Circuit has instructed this Court to formulate a student assignment plan which will remedy the dual nature of the DISD found to exist in 1971.

I. The Parties

The cast of legal characters in this desegregation drama has changed since 1971, with the addition of new intervenors and the departure of intervenors previously in the case. The present actors still include the plaintiffs, representing a class of black and Mexican-American students in the DISD; the defendant DISD; the Curry intervenors, representing a group of North Dallas students; the intervenor James T. Maxwell, representing himself; and the City of Dallas.² Additionally, the Metropolitan Branches of the National Association for the Advancement of Colored People (NAACP) were granted leave to intervene on August 25, 1975; the Strom intervenors, representing a class of persons living in naturally integrated areas of Western Oak Cliff and Pleasant Grove, were granted leave to intervene on August 25, 1975; and the Brinegar intervenors, representing a class of persons living in the naturally integrated area

¹ *Tasby v. Estes*, 517 F.2d 92 (5th Cir. 1975).

² The City of Dallas remained a party to this phase of the proceedings but did not play an active role during this phase.

of East Dallas, were given leave to intervene on September 17, 1975.

On September 16 the Court challenged the business leaders of Dallas to become involved and further pointed out that everyone in the district had a job to do — that it was not a job for the Court alone. The business leaders have responded to the challenge and have shown their sincere interest. Many churches, their leaders, and many organizations have expressed significant interest and offered to assist the Court. Additionally, a group of citizens formed a committee composed of six blacks, seven Mexican-Americans, one American Indian and seven Anglos. This group became an affiliate of the Dallas Alliance and became known as the Educational Task Force of the Dallas Alliance. The Dallas Alliance is a community service organization designed to act on and aid in the solution of urgent issues of the community. It consists of a forty member Board of Trustees, and seventy-seven correspondent organizations in the Dallas area.

This Task Force met for a period of four months and spent approximately 1500 hours together in devising concepts and principles for a desegregation plan for a DISD. They sent various members of their group to cities around the country to discover all possible tools for desegregation, and met with or talked with thirty leading figures in the desegregation field. Finally, on February 17, 1976, the Alliance group filed their plan for the DISD with the Court. The Court granted them the status of Amicus Curiae for the purpose of presenting their ideas and plan to the Court, and heard evidence from Dr. Paul Geisel regarding the plan.

The Court has before it several student assignment plans, offered to remedy the dual nature of the DISD. The School Board, being charged with the responsibility of devising an acceptable plan,³ filed its plan on the 10th of September, 1975. The NAACP devised a student assignment plan which was also filed on September 10. The Court was not wholly satisfied with either of these plans, as it indicated in a hearing on September 16. Therefore, the Court employed an expert in the field of education and desegregation, Dr. Josiah C. Hall of Miami, Florida. Dr. Hall presented a student assignment plan to the Court which was filed December 29, 1975. The plaintiffs meanwhile were working on a student assignment plan, and ended up filing two plans on January 12, 1976. Likewise, the Education Task Force of the Dallas Alliance met for several months considering concepts for a desegregation plan for the DISD, and filed their results with the Court on February 17, 1976. In addition, the Court received and has considered other plans and suggestions from various citizens and groups.⁴

II. *Applicable Law*

In this complex and ever-changing area of the law, it is difficult if not impossible to discover hard and fast rules for this Court to follow. Certainly, the "transition to a unitary, non-racial system of public education was and is the ultimate end to be brought about."

³ *Brown v. Board of Education (II)*, 349 U.S. 294 (1955).

⁴ A group of students at Skyline High School drew a student assignment plan for the DISD and submitted it to the Court. Others were submitted by the Alliance for Integrated Education and a number of other groups and concerned parents.

Green v. County School Board, 391 U.S. 430, 436 (1967); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Brown v. Board of Education II*, 349 U.S. 294 (1955). Similarly, this Court recognizes that "[t]he objective today remains to eliminate from the public schools all vestiges of state-imposed segregation." *Swann v. Board of Education*, 402 U.S. 1, 15 (1970).

Nevertheless, school districts are like fingerprints — each one is unique. Although the goal of a unitary, nonracial system is a constant, the method or plan for achieving that goal must be tailored to fit the particular school district involved. A plan that is successful in a district having a small student population or occupying a small area geographically, a rural district, a county-wide district, or a majority Anglo school district, will not necessarily be successful in a large urban district such as the DISD. As the Supreme Court observed in *Brown II*, *supra* at 299:

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of the school authorities constitute good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.

Throughout the proceedings on remand, this Court has held foremost in its mind the unique characteristics of the DISD, in order to insure that a feasible, workable plan is adopted which will realistically establish a unitary system in the DISD.

The Fifth Circuit remanded this case with instructions to formulate a new "student assignment plan." The DISD has maintained throughout these proceedings that the Court can consider nothing except a bare-bones student assignment plan. Although this Court recognizes that the mandate from the Fifth Circuit referred consistently to formulating a "student assignment plan," it does not interpret that language as limiting this Court to a plan which merely provides for moving bodies between buildings. As the Fifth Circuit held in *Calhoun v. Cook*, 522 F.2d 717 (1975), rehearing denied, 525 F.2d 1203 (1975):

The aim of the Fourteenth Amendment guarantee of equal protection on which this litigation is based is to assure that state supported educational opportunity is afforded without regard to race; it is not to achieve racial integration in public schools.

A student assignment plan cannot operate in a vacuum; it must include whatever additional tools are necessary to carry out the mandate that equal educational opportunity be provided, and to insure that a truly unitary system is established.

In adopting a student assignment plan, this Court is required to arrive at a delicate balance — the dual

nature of the system must be eliminated; however, a quota system cannot be imposed. The Supreme Court ruled in *Swann*, supra at 26, that

[t]he district judge or school authorities should make every possible effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools.

On the other hand, the Supreme Court held that

[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Ibid. at 24.

In arriving at this balance, the practicalities of the situation are to be taken into account. *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, at 37 (1970). These practicalities include travel time and distance, and the age of the children.

An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process. . . . It hardly needs stating that the limits on time or travel will vary with many factors, but probably with none more than the age of the students.

Swann, supra at 30.

The Fifth Circuit instructed this Court to use the techniques discussed in *Swann* to dismantle the vestiges of the dual nature of the DISD. The Supreme Court said in *Swann* that "[d]esegregation plans cannot be limited to the walk-in school," if this will not produce a unitary system. *Swann*, supra at 30. All available techniques are to be considered in the formulation of student assignment plans, including the restructuring of attendance zones and the pairing of both contiguous and noncontiguous attendance zones. *Swann*, supra; *Davis*, supra.⁵

The Supreme Court's decision in *Swann* also emphasized the equitable nature of the remedies phase of a desegregation case. It quoted the following language from *Brown II*:

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.

Swann, supra at 12. Later it stated:

In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers

⁵ The pairing of noncontiguous attendance zones and the use of transportation is of course limited by the practicalities mentioned above.

may be exercised only on the basis of a constitutional violation . . . As with any equity case, the nature of the violation determines the scope of the remedy.

This Court has kept in mind throughout these proceedings that its findings in 1971 were that the "vestiges" of a dual school system remained in the DISD, and not that the DISD was a dual system at that time. The plan adopted now must therefore remedy these vestiges without exceeding this Court's equitable powers to balance public and private needs.

Finally, guidance as to the role of this Court has been given by the Supreme Court in *Green*, supra at 439:

The obligation of the district court, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. . . .

Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed.

With this task in mind, the Court heard testimony regarding the feasibility and effectiveness of these plans presented by the parties during hearings which lasted continuously from February 2 to March 5. All the plans utilize, to varying degrees, the concepts of pairing and clustering schools, and of transporting students for the purpose of establishing an integrated or unitary school system, as approved by the Supreme Court in *Swann*, supra. Each of the plans incorporates other tools, as well as transportation, to help insure that an integrated school system is achieved. The Court finds some meritorious suggestions in each of the plans, including the concept of magnet schools suggested by the DISD, the plaintiffs and others; the majority to minority transfer program advocated by all parties; and the concept of a monitor or auditor proposed by the plaintiffs, the NAACP and the Dallas Alliance Task Force. The Court is convinced that the plan of the Educational Task Force of the Dallas Alliance will effectively establish a unitary system of education in the DISD and that it "promises realistically to work now." *Green*, supra at 439.

III. *Present Characteristics of the DISD*

The most significant feature of the DISD now as opposed to 1971 is that the DISD is no longer a predominantly Anglo student school system. In the

years which have intervened since this Court's 1971 order, the percentage of Anglos in the DISD has declined from 69% to 41.1%, and projections show no reversal of this trend to a predominantly minority district. According to the most recently compiled figures,⁶ the racial composition of the DISD student body is 41.1% Anglo, 44.5% black, 13.4% Mexican-American, and 1.0% "other." In the 1970-71 academic year, the DISD enrolled 163,353 students in grades 1-12, whereas in December, 1975, the DISD enrolled only 131,757 students. Over the past five years the DISD has lost, for one reason or another, 40.9% of its Anglo student population.⁷

Nevertheless, the DISD continues to be the eighth largest school district in the nation, covering an area of approximately 351 square miles. Its 180 separate campuses house 141,122 students (including kindergarten), and its total expenditure for the 1975-76 academic year is \$164,788,000.

Although the DISD in 1975-76 cannot be considered to be wholly free of the vestiges of a dual system, significant strides in desegregation have been made since the Court's 1971 order as a result of natural changes in residential patterns in the past three years. In the 1970-71 school year, 91.7% of all black students in the DISD attended predominantly minority schools, whereas in the 1975-76 school year, the percentage has dropped to 67.6%. Testimony during the hearings

⁶ Dec. 1, 1975, DISD *Hinds County* figures. See Appendix A for racial composition of each grade level.

⁷ An HEW Report shows that in October 1969 there were 97,103 Anglo students in grades 1-12, and in October 1975 there were 57,426 Anglo students in grades 1-12.

showed that large areas of Dallas which formerly reflected segregated housing patterns are now integrated, namely Western Oak Cliff, Pleasant Grove, East Dallas, the area of North Dallas included in the attendance zone for Thomas Jefferson High School.⁸

Testimony also established that the DISD has undertaken in good faith and on its own to equalize the educational opportunity for all children during recent years. The plaintiffs introduced a 209-page *Report of a Study of Instruction in the Dallas Independent School District 1974-1975* which was conducted by Dr. Francis S. Chase and eight staff associates. This report was initiated by the School Board, but Dr. Chase testified that he and his staff, who had no connection with the DISD, were not impeded in any way in conducting this study or presenting their findings. Their findings included the following passage:

The staff of the Study of Instruction has identified a number of characteristics in which the Dallas Independent School District is either preeminent or close to the top among public school systems. Some of these characteristics which hold high potential for the improvement of education are:

1. The commitment to, and the heavy investment of resources in, curriculum, design, development, and implementation.
2. A broadly conceived and well-staffed program of research and evaluation to define

⁸ See Appendix B, an exhibit introduced by the Strom intervenors which shows the changes in racial composition of formerly predominantly Anglo secondary schools.

needs, inform decisions, assess the effectiveness of programs and services, and indicate deficiencies in program implementation or operation.

3. The creation of an extensive network of communications through which community organizations and large numbers of teachers, students, parents, and other citizens may learn about and participate in educational decisions and programs.

4. Frank acknowledgment of barriers to equal educational opportunity, followed by constructive measures such as the Affirmative Action Program, the extension of Multi-Ethnic Education, the implementation of Plan A for better treatment of learning disabilities, and support for inner-city school renewal projects.

5. The number and variety of innovations initiated and the continuing search for ways of responding to the demands for improved education.

6. The extensive program of personnel development through released time, other special programs, and four area teacher centers which work in cooperation with seven colleges and universities.

7. The planning, development, and operation of career education programs and emphases — with continuing efforts to extend and improve career education at all levels.⁹

⁹ *Study of Instruction*, pp. 35-38.

In spite of the DISD's efforts, Dr. Chase' study concluded that there is still a gap between intent to provide equal educational opportunity and the achievement of this goal. But the study also concluded that the DISD is accepting the continuing challenge to speed progress and close this gap.

The Dallas Independent School District, in recent years, has acknowledged frankly the existence of persisting inequalities and inadequacies in its provisions for education. Instead of regarding these conditions as inevitable, the District has moved progressively to treat them as challenges with which it must cope swiftly and effectively. All school systems, and especially those in our larger cities, are faced with the urgent necessity of alleviating the learning disabilities which have their roots in poverty, prejudice, and other forms of discrimination. No other school district offers a better prospect for significant progress in this direction.¹⁰

The study thoroughly evaluated the DISD's programs, pinpointing areas which needed improvement and making recommendations to that end.¹¹ Dr. Chase testified that this study was unique in the amount of response it elicited from the School Board and the Administration; he testified that there is not one item cited that the Board and Administration have not responded to in some way. His testimony was that there can never be a perfect school system, but that at

¹⁰ *Ibid.*, p. 200.

¹¹ *Ibid.*, pp. 205-209.

least the DISD is conscientiously on the road to providing equal educational opportunity for all.

The plan which this Court is ordering to be implemented promises to continue this trend of desegregation and will, when fully implemented, remove all vestiges of the former dual system in the DISD. The Court is convinced that this plan will, at the same time, "assure that state supported educational opportunity is afforded without regard to race." *Calhoun*, supra at 396. *Milliken v. Bradley*, 418 U.S. 717, 740-741 (1974); *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (1969); *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

IV. An Analysis of the Plans Before the Court

A. DISD's Plan

The DISD's plan was devised by the staff of the DISD under the direction and supervision of Dr. Nolan Estes. The district is divided into three categories for the purpose of student assignment — the integrated parts of the school district,¹² the remaining predominantly Anglo parts of the district,¹³ and certain minority parts of the district. The DISD's plan proposes to retain the present student assignment patterns for the naturally integrated areas,¹⁴ as desegregation has

¹² These areas are integrated due to residential housing patterns.

¹³ These areas lie generally across the far northern and eastern portions of the DISD.

¹⁴ "Integrated" was defined by the DISD as not more than 75% Anglos or more than 75% combined blacks and Mexican-Americans.

already occurred in these areas.¹⁵ Pairing and clustering techniques, both contiguous and noncontiguous, were used to desegregate grades 4-12¹⁶ of the predominantly Anglo areas of the district. The grade configurations were proposed to be:

K - 3 Elementary Schools

4 - 5 Intermediate Schools

6 - 7 Middle Schools

8 - 9 Junior High Schools

10 - 12 Senior High Schools.¹⁷

The remaining predominantly minority areas of the districts would continue to be served by predominantly one-race minority schools.¹⁸

In addition, the DISD proposed to set up 17 magnet schools to serve the entire district. Ten of these magnets would be for the elementary level, and would offer "fundamental" programming¹⁹ or "individually

¹⁵ There are 55 schools meeting this criteria.

¹⁶ Grades K-3 would continue to attend schools closest their homes.

¹⁷ There are 72 schools in this category.

¹⁸ There are 48 schools in this category serving 42 attendance zones.

¹⁹ "Fundamental" programming was described as concentrating on reading, writing, and arithmetic, and being a highly structured environment.

guided" programming.²⁰ Seven of the magnets would operate on the secondary level (grades 8-12 in six of the seven cases), and would offer a variety of programs oriented toward careers, the creative and performing arts,²¹ transportation and technology,²² and world cultures. These programs are all in existence now in the DISD and are proving extremely successful.²³

Finally, the DISD's proposal included the retention of the majority to minority transfer program presently in existence in the DISD.

The analysis showed that 13,947 students would be transported for desegregation purposes,²⁴ and that the total cost to implement²⁵ would be \$6,811,240, causing a 9¢ tax increase.²⁶

20 "Individually guided" programming was described as using a diagnostic prescriptive approach in a highly flexible setting. There would be approximately one teacher for every 15 students, and the students would be able to move along at their own pace.

21 This magnet would be located near Fair Park and would have those cultural facilities available.

22 This magnet would be located at Love Field, the airport recently closed.

23 Skyline Career Development Center, serving grades 10-12, is recognized as one of the outstanding magnet schools in the nation.

24 In the Western Oak Cliff area, the DISD's proposal would transport 1500 black students to predominantly minority schools.

25 This includes the cost of buses, bus monitors, building modifications, portable classrooms, and magnets.

26 Ch. 20.04d of the Texas Education Code, based on Art. 7 § 3 of the Texas Constitution, limits the assessment of school taxes for any school district in Texas to \$1.50 per \$100 property value. The tax rate for the DISD presently is \$1.40 per \$100 property value. Thus any plan which increases the taxation rate more than 10¢ would cause an increase in class size past the present 27 students, or else cause a reduction in enrichment programs.

B. Plaintiffs' Plans

Plaintiffs' proposed plans were devised by the plaintiffs' attorneys, using guidelines laid down by Dr. Charles Willie of Harvard.

1. Plan A

Under Plan A, the DISD would be divided into seven elementary subdistricts. An attempt was made to have each school reflect the racial composition of that subdistrict. The naturally integrated elementary schools retained their present student assignment patterns.²⁷ All other schools were paired or clustered for grades 1-12.²⁸ The grade configurations proposed were grades K, 1-3, 4-6, 7-9, and 10-12.²⁹

Plaintiffs proposed the use of magnet schools constructed in the inner city to draw Anglos into those areas. They suggested the retention of the majority to minority program. They suggested that the DISD expand and improve its in-service training program for faculty and staff. Finally, they proposed a system of accountability to insure that the DISD complies with this Court's order and with the goal of quality education for each student enrolled in public school.

An analysis of Plaintiffs' Plan A showed that approximately 69,000 students would be transported, and

27 There were 13 elementary schools in this category.

28 Kindergarten children would attend the schools closest their homes.

29 This was done wherever possible. Other grade configurations do appear, such as K, 1-4, 5-6, 7-9, 10-12.

that the projected total cost to implement³⁰ would be \$22,030,590, causing a 29.4¢ tax increase.

2. Plan B

Under Plan B, the DISD would be divided into eight elementary level subdistricts. The residentially integrated areas were not included in the new student assignment patterns.³¹ One of the subdistricts would remain predominantly minority and would retain its present assignment patterns,³² but would become a "model cluster" with enhanced facilities and programs. The other areas were paired and clustered to achieve desegregation.

In addition, Plan B calls for magnet schools in all schools which had a predominantly minority enrollment prior to this year to enhance the attractiveness of these schools.³³ Plan B proposes the expansion of the DISD's present bi-lingual program.³⁴ Other features such as the majority to minority transfer program, in-service training, and a monitor or system of accountability mentioned above would also be included in Plan B.

³⁰ DISD's projection based on the elements of Plan A, including cost of buses, bus monitors, building modification, and portable classrooms.

³¹ There are 39 elementary schools in this category.

³² This is the South Oak Cliff area, and included twelve elementary schools, two junior high schools, and one high school.

³³ This would include renovations and curriculum revision.

³⁴ Testimony from several experts indicated that the DISD's bi-lingual program is the best in the nation. Dr. Estes testified that the DISD is presently attempting to expand this program to all schools as rapidly as possible, but that the demand for bi-lingual instructors is presently greater than the supply.

An analysis of Plan B showed that approximately 47,000 students would be transported under this plan. The estimated cost of implementation³⁵ is \$14,963,680, which would necessitate a 20¢ tax increase per \$100 property value.

C. NAACP Plan

The NAACP's proposal was drawn by Dr. Charles Hunter of Bishop College. It contained a number of concepts and proposals to be utilized by the DISD in implementing the plan, as well as a rough outline of schools to be paired and clustered to achieve desegregation. The naturally integrated areas were left with their present assignment patterns, and the rest of the schools were paired and clustered so that every school would have a racial balance comparable to the racial balance in the district (with a 10% variance up or down).³⁶ Innovative programs would be fostered in the inner city schools, as well as in magnet schools, which would operate on a district-wide basis. Among other suggestions, the NAACP plan proposed monitoring procedures which would be available to make adjustments in student assignments when changes in racial patterns are noted.

³⁵ Using the same criteria mentioned above.

³⁶ The NAACP proposed to achieve racial balance between blacks and Anglos first and then follow with other minorities.

An analysis of the NAACP's plan indicated that approximately 40,000 students would be transported. The estimated partial cost³⁷ is \$7,163,310, necessitating a 15-1/2¢ tax increase for the buses and bus monitors alone.

D. Dr. Hall's Plan

The student assignment plan submitted to the Court by Dr. Hall is similar to those of the DISD and Plaintiffs' Plan B, in that it divides the district into the categories of residentially integrated areas,³⁸ paired and clustered areas, and predominantly minority areas. The naturally integrated areas would retain their present assignment patterns.³⁹ Schools in predominantly Anglo areas are paired clustered with schools in predominantly minority areas to the greatest degree possible.⁴⁰ The grade configuration for this category of schools is K-1 (nearest schools), 2-5, 6-7, 8-9, and 10-12. If the time and distance proved to

³⁷ It was not possible to give an estimated total cost because expenditures for building modification, moving portables and equipment could not be determined under their plan.

³⁸ Dr. Hall's guideline for determining an integrated school is no more than approximately 75% nor less than approximately 30% of combined minority groups.

³⁹ There are approximately 55 schools in this category.

⁴⁰ The factors of time and distance were taken into account by all parties — the DISD and Dr. Hall limited time of transportation to 30 minutes each way. The Plaintiffs strove for this, but acknowledged that in their plans greater time was involved. The NAACP's plan limited time of transportation to 40 minutes.

be too great, then the schools would retain their present assignment patterns.⁴¹

In addition, Dr. Hall proposed the establishment of Early Childhood Centers in Title I⁴² areas. These centers would be for ages 5 and 6, and hopefully age 4, and would provide enriched programs, using State and Federal Compensatory Education funds, with a pupil-teacher ratio of approximately 20-1. Additional personnel would also be provided as well. Dr. Hall also recommended using these centers as Community centers.

Dr. Hall recommended the continuation of the DISD Metropolitan Learning Centers for secondary school students who do not respond to the traditional school setting. He suggested maintaining the present magnet school of Skyline Center for Career Education, and expanding the magnet concept wherever possible.

An analysis of Dr. Hall's plan indicates that approximately 20,000 students would be transported for desegregation purposes. The estimated cost of his plan⁴³ would be \$7,163,310, and would necessitate a tax increase of 9.6¢.

⁴¹ The statistics regarding time and distance on these schools were carefully documented. There are 34 predominantly minority schools in this category. Five of the schools were elementary schools who would move on to integrated junior high and high schools. The schools in this category were considered by Dr. Hall to be superior schools (with the exception of renovation at three schools) in terms of facilities and the environment in which the schools are located. Nineteen of the schools in this category were at one time predominantly Anglo schools.

⁴² This refers to funds provided for certain areas under the Elementary and Secondary Education Act of 1965.

⁴³ This cost estimate was again provided by the DISD using the same criteria mentioned above.

E. The Dallas Alliance Plan

The student assignment plan proposed to the Court by the Dallas Alliance Task Force on Education utilizes many of the concepts or tools used in the other plans, and also introduces new concepts. Like the plaintiffs' plans, the Alliance plan divides the DISD into smaller subdistricts. These attendance areas or subdistricts would in general reflect the Northwest, Northeast, Southeast, South Oak Cliff, and Southwest geographical sections of the district. Every subdistrict except South Oak Cliff would have approximately the same student population and would have minority ratios which would approximate that of the whole DISD, plus or minus 5%. Grade levels would be standardized on a K-3, 4-8, 9-12 basis. For grades K-3, new attendance zones would be drawn to achieve as much natural desegregation as possible, and students would be assigned to the nearest school which would promote integration, not to exceed four miles from home. Attendance zones in K-3 would not necessarily consider the five attendance zones.

On the K-3 level, special teaching strategies and enriched program options would emerge for students in all areas. The Alliance plan proposes that efforts to maximize parent involvement following the Early Childhood Education model from California be introduced in September 1976 and completed by September 1979. This K-3 approach would be primarily diagnostic-prescriptive. It would result in an adult-student ratio in instruction of approximately 1-10. (Adult is a teacher aide, a parent, an older student tutor, etc.)

For grades 4-8, students would only be assigned to schools within the attendance subdistrict in which they live. Areas that are naturally integrated would retain their present student assignment patterns (except that 8th grade would be added to the lower grades). Students in areas that are not naturally integrated would attend schools in the center of each subdistrict in which they live, in a manner so that each school's minority ratio reflects the minority ratio of the 4-8 student population of the area, plus or minus 10%. Magnet schools for 4-8 would also be established, with a priority on magnets in the South Oak Cliff area. The magnets would be open to all 4-8 students in the DISD on a voluntary basis. The magnets would also reflect the minority ratios of the 4-8 student population in all areas (with the exception of South Oak Cliff), with allowance for a 10% plus or minus variation from the percentage of all minority students in the DISD.

For grades 9-12, the Dallas Alliance proposes Magnet High Schools and Magnet Comprehensive High Schools.⁴⁴ These would be open to all 9-12 students on a voluntary basis, but with minority ratios of the 9-12 student population of the DISD, with allowance for a 10% plus or minus variation from the percentage of all minority students in the DISD. Partnerships and working relationships between institutions of higher learning, the business and the cultural communities would be encouraged with each magnet high school. During the 1976-77 school year, at least four additional magnets would be opened in the

⁴⁴ A Magnet Comprehensive High School includes regular high school curriculum as well as special career and other programs.

central area of the city,⁴⁵ and at least three additional magnets would be established by 1979-80. Each magnet would accommodate a minimum of 1,000 students, and would open as rapidly as it fills. Seven magnets would be therefore considered a minimum, not a maximum number to be implemented. Until all students attend magnet high schools, grades 9-12 would attend the nearest area high school in the sub-district in which the students live.

Aside from student assignment concepts embodied in the K-3, 4-8, and magnet 9-12 arrangement, the Alliance plan addresses itself to other facets of a unitary school system. With regard to personnel, it proposes the development of recruiting and employment policies to insure that competent personnel are employed at all levels and that the percentages of white, black and brown administrators, principals, teachers approximate DISD-wide the respective percentages of those races represented in the City of Dallas in 1976, as a minimum, within three years. The DISD would rely on expanded scope of positions, reassignment, and attrition to meet that goal. It proposes that the top salaried line administration positions (currently established at 185 in number)

⁴⁵ These were suggested as

- 1) a new magnet comprehensive Lincoln High School, costing approximately \$14,500,000
- 2) a magnet for Business Education and Management at Crozier Tech. established in cooperation with the businesses in the Central Business District (the downtown Dallas area)
- 3) a magnet for the creative arts of Madison High School, due to its proximity to the Fair Park Music Hall and other cultural facilities
- 4) a magnet for aviation training at Love Field, the airport partially closed due to the opening of the Dallas-Fort Worth Regional Airport, etc.

reflect the percentages of the ethnic makeup of the DISD student population (approximately 44% Anglo, 44% black, and 12% Mexican-American) by 1979. This transition would occur on a schedule of one-third by 9/1/77, one-third by 9/1/78, and one-third by 9/1/79.

The Alliance plan also proposes training for teachers to improve their proficiency and their ability to perform in a multicultural setting, assessment on a regular basis of the competence of personnel, and a system of internal and external accountability measures to insure that a unitary system was in fact achieved.

Although the exact numbers of students transported and the exact cost could not be determined,⁴⁶ it has been established by the DISD that approximately 20,000 students would be transported at a cost of \$5,830,000, necessitating a tax increase of 7.8¢. The funds for the capital expenditure of \$16,500,000 for magnet schools the first year would be accommodated by the present bond issuance, without any additional tax increase. The annual operating cost of this plan has been estimated at \$5,000,000. This plan therefore is economically feasible without the increase in class size or decrease in established programs.

V. The Plan to be Implemented

The Court has carefully considered the various concepts suggested in the plans briefly summarized above, and finds that the following tools will be most

⁴⁶ The administration and staff of the DISD need to work out the details of this plan.

effective in addressing and solving the problem of vestiges which remains in this large urban district of ours.

A. The Subdistrict Concept

Several experts, including the plaintiffs' Dr. Charles Willie, testified that with a city as large as Dallas, a series of subdistricts (each with elementary, middle, and high schools) is more effective than one large district. This will give parents and students a sense of community and control over their schools, which the Supreme Court has recognized as so important to the successful functioning of our schools.

No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. See *Wright v. Council of the City of Emporia*, 407 U.S. 451, at 469. Thus, in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 50 (1973), we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages "experimentation, innovation, and a healthy competition for educational excellence."

Milliken v. Bradley, 418 U.S. 717, at 742 (1973). Moreover, it helps minimize the transportation dis-

tance and time, since this is limited to each sub-district.⁴⁷

Each subdivision will approximate the racial makeup of the DISD as a whole, with the exception of South Oak Cliff.⁴⁸ Due to the geographic layout of the DISD, and the factors of time and distance, this South Oak Cliff area was left predominantly black in every plan proposed to the Court, with the exception of Plaintiffs' Plan A, which proposed to establish an exact racial balance in every school and which would have necessitated the transportation of 49,000 students. The Court is of the opinion that, given the practicalities of time and distance, and the fact that the DISD is minority Anglo, this subdistrict must necessarily remain predominantly minority or black. However, this does not mean that the goal of equal educational opportunity for all cannot be achieved. In terms of facilities, Dr. Hall testified that with the exception of Budd and Harllee Elementary Schools and the site at Roosevelt High School, the facilities in this area can be categorized as superior. Additionally, Dr. Hall testified that the environment in which each center is located, i.e., the property immediately adjacent to the schools, as well as the residential area

⁴⁷ Magnet schools would be on a city-wide basis, however.

⁴⁸ Estimates show that the racial makeup would be as follows:

		Anglo	Black	Mexican-American
I.	Northwest	44%	39%	16%
II.	Northeast	41%	42%	17%
III.	Southeast	46%	46%	8%
IV.	South Oak Cliff		98%	2%
V.	Southwest	42%	27%	31%

served by them, can be classified as superior. Dr. Hall testified that educational opportunities in terms of facilities or programs would not be improved by complete redistribution of all pupils, and in some situations, they would be lessened.

With the renovation of some of the facilities in this area, this subdistrict could be a model for the district and the nation, and attract Anglos to it on the basis of its superior programs and facilities.

B. The K-3 Diagnostic-Prescriptive Concept

The Court adopts the Dallas Alliance' concepts regarding grades K-3 for a number of reasons. As the Supreme Court observed in *Swann*, the most important factor to consider in implementing a transportation plan is the age of the children in relation to the time and distance travelled. Dr. Estes testified that the DISD's plan left the K-3 grades in the schools nearest their homes due to the fact that the children had not matured sufficiently to cope with the problems of safety and fatigue associated with significant transportation. The Court finds that this conclusion is sound, in terms of age, health, and safety of children in grades K-3.

Furthermore, there appears to be no deprivation of the right of the minorities to equal educational opportunities on the K-3 level. As Dr. Chase testified, the disparity, if any, is in favor of the lower socioeconomic areas on the K-3 level, due to the special programs and efforts of the DISD in those areas.

Finally, the diagnostic-prescriptive concept so successfully used in California will insure that children everywhere in the district will be afforded equal educational opportunity and that any remaining vestige of a dual system (if it in fact exists on the K-3 level) will be eliminated.

C. The 4-8 Central Area Concept

The concept of locating grades 4-8 close to the center of each Area or Subdistrict is based on pragmatic considerations. Transportation distance and time will be minimized for all students in these grades, no matter where they live in each subdistrict. By bringing all students in each subdistrict together in these grades, the plan assures that no group is deprived of equal educational opportunity. By locating special magnet programs in the South Oak Cliff area in grades 4-8, this area will attract students of all races from the district as a whole, and will insure that this area is not deprived of educational opportunities.

D. The 9-12 Magnet Concept

The magnet concept, widely used in other school districts, attracts students because of special career, vocational, or other programs that the magnet school offers. It is undisputed that the Skyline Career Development Center, which offers a myriad of career-oriented programs, is a model for the nation and that it demonstrates the success magnet schools can have in drawing students of all races and in offering quality education for all.⁴⁹

⁴⁹ The student body at Skyline presently reflects an ethnic population of approximately 60% Anglos, 33% blacks and 6% Mexican-Americans.

Moreover, this Court must adopt a plan which promises to be *effective* in eliminating the vestiges of a dual system. The Court is convinced that the magnet school concept on the 9-12 grade level will be more effective than the assignment of students to achieve a certain percentage of each race in each high school. The Court tried this method of student assignment in 1971, and it has not proven wholly successful in achieving the goal of eliminating the vestiges of a dual system in these grades. The evidence shows that of approximately 1,000 Anglos ordered to be transported to formerly all-black high schools under this Court's 1971 student assignment plan, fewer than 50 Anglo students attend those schools today. Whatever the cause might be for the non-attendance of Anglos in those schools today,⁵⁰ this Court finds that it can in no way be attributed to official actions on the part of school authorities.

⁵⁰ As a result of the offer of evidence of the Curry intervenors, the battle of the sociological experts developed. The Curry intervenors took the position that a "forced busing" order would cause resegregation and a further reduction of the Anglo student population of the DISD. Plaintiffs responded that desegregation orders, even those including "forced busing," are not the prime factor in a decrease in Anglo school population. Whatever may be the strength or weakness of the opinions of these experts and the bases on which such opinions were reached, the fact remains that in the DISD between the 1971 desegregation order and today the Anglo student population has decreased by approximately 40,000. It is a well-settled principle of law that "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown II*, at 300. Nevertheless, this Court cannot control the prejudice or anti-busing sentiment which might exist in the minds of some private individuals. The mandate of the Supreme Court is to adopt the plan which promises realistically to be most effective, and after our experience with the 9-12 level, this Court is of the opinion a magnet school approach will accomplish this goal. See *Mapp v. Board of Education*, 525 F.2d 169 (1975).

While some blacks are still transported today to previously all-Anglo schools, these students could continue to do so under the majority to minority program, or could attend any magnet high school in the district. It should also be noted that changes in demographic patterns have resulted in the drastic reduction of predominantly Anglo high schools in the DISD.

The most realistic, feasible, and effective method for eliminating the remaining vestiges of a dual system on the 9-12 level, and for providing equal educational opportunity without regard to race, is the institution of magnet schools throughout the DISD. In this way, students of all races will join in working in areas of their special interest. Although these magnet schools cannot be created with the wave of a wand, they can be established at an accelerated pace with the help, financial and otherwise, of the business community of Dallas. The Court requests and sincerely believes that the business community will provide its resources and talents to help the DISD in this way. The Adopt-a-School program, presently operated by the DISD and such major corporations as Xerox and Bell Telephone, provides an example of what can be achieved through the cooperation of DISD administrators and educators on the one hand, and the business, educational, and cultural communities on the other hand. With the creation of this network of magnet schools, there can be no doubt that all vestiges of a dual system are eliminated.

E. The Concept of Naturally Integrated Areas

As mentioned above, there is a substantial number of schools in the DISD in which the racial makeup of the student population reflects naturally integrated housing patterns. Two groups of intervenors represent parents and students living in several of these residentially integrated areas — namely the Strom intervenors, representing Western Oak Cliff and Pleasant Grove, and the Brinegar intervenors, representing East Dallas. These intervenors maintain that where integration in schools has been achieved through natural housing patterns, the present student assignments should be retained, since no vestiges of a dual system remain in these areas. The Court is in agreement with this concept. There is no denial of the right of educational opportunity in these areas, and, as all parties recognized, there would be no benefit, educational or otherwise, in disturbing this trend toward residential integration.⁵¹

F. The Concept of Accountability

As The Supreme Court recognized in *Green*, supra at 439, "whatever plan is adopted will require evaluation in practice"

A system of accountability performs three general functions:

⁵¹ The Brinegar intervenors pointed up the fact that since the Dallas Alliance plan does not yet detail student assignments, it is difficult to determine its impact on the integrated areas. The Court recognizes this problem, and will provide a one-week period after the student assignment portions of the plan are filed with the Court as hereinafter directed, for recommended modifications, if any, regarding the naturally integrated areas.

- 1) it informs the Superintendent and the School Board how the administration is responding to the goals and objectives of the plan;
- 2) it provides the Court with an objective evaluation of the DISD's compliance with the ordered plan;
- 3) it informs the citizenry and serves as a tool for constructive input.

The Court is adopting the Alliance plan's concepts of accountability. Regarding the internal monitor, it will be acceptable for the DISD's Research and Development Department⁵² to report to the Court. This report shall be on December 15 and April 15 of the year, until a showing that a unitary system has been achieved. This report should include:

1. The number and percentage of pupils by ethnicity attending each educational center, including magnet schools.
2. The number and percentage of pupils by ethnicity being transported for desegregation purposes.
3. The number and percentage of pupils by ethnicity obtaining majority to minority transfers (including the exception for Mexican-American students).
4. The number and percentage of teachers by ethnicity assigned full time in each educational center.

⁵² If the DISD wishes to develop some other monitor or unit to report to the Court, it is free to do so.

5. The number and percentage of new teachers, administrators, and teacher aides by ethnicity engaged by the DISD.
6. The current status of capital outlay projects.
7. The status of Early Childhood Education program.
8. The results of the annual standardized achievement tests program by school, grade, and ethnicity (April 15 report only).
9. Efforts made by the system to successfully implement the order of this Court in the following areas:
 - a. Parent involvement efforts
 - b. Staff development activities
 - c. Communications and community relations programs
 - d. Student leadership training programs

(April 15 report only).

Subject to the approval of the selection by the Court, the DISD shall also secure the service of an independent professional firm to evaluate compliance with this order and the efforts to achieve a unitary system by the DISD. Such report should be filed with the Court annually on April 15, until a showing is made that a unitary system has been achieved. The criteria for monitoring suggested by the Alliance plan should be used as guidelines for this external monitor.

The Tri-Ethnic Committee established by the Court's 1971 order has served as community monitor for the Court, the School Board, Superintendent, and

the public regarding compliance with that order. The Tri-Ethnic Committee will continue its efforts in this regard with the same powers, duties, and responsibilities provided in the Court's 1971 order except that it is relieved of any duty to select independent evaluation services from outside the DISD.

Finally, the Court is aware of the fact that demographic changes may necessitate revisions in student assignments in the future. Therefore the Court will retain Dr. Josiah Hall as an advisor to the Court and may call on him to recommend revisions or to review recommendations of the DISD regarding future student assignment.

G. Personnel Concepts

It is well-settled that school administration and personnel play an important role in the achievement of a unitary school system. Administrators and personnel must be responsive to the needs of all racial groups, and must not discriminate against any group on the basis of race. In order to achieve and maintain a truly unitary DISD, the Court is adopting the personnel concepts of the Alliance plan. The Court is aware that training programs for teachers, principals and administrators already exist in the DISD. Naturally, these programs should be continued.

H. Majority to Minority Transfer Concept

None of the parties dispute the usefulness of this tool in providing educational opportunity without regard to race. This program will remain in effect for

all grade levels under the guidelines presently utilized by the DISD,⁵³ with the exception that minority to majority transfers will be allowed in instances where Mexican-Americans comprise less than 5% of the originally assigned school. This exception will be allowed in order that the bi-lingual education program will be available to all Mexican-American students who need it.

VI. Conclusion

The DISD has acted in good faith since this Court's order in 1971 and has made reasonable efforts to fulfill the obligations imposed by that order. The DISD has further taken good faith steps to eradicate inequality in educational opportunity which has previously existed in the DISD. Had the DISD not shown a willingness to improve the quality of education for all its students, and especially those in the minority areas which previously had been neglected, this Court might feel impelled to adopt a different remedy. However, the vestiges of a dual system remaining in the DISD can be realistically and effectively eradicated by the implementation of the plan adopted herein. This will not mean that the DISD will be perfect, for school districts are run by mere mortals, and judicial decrees can make them no more. It will mean that the DISD has fulfilled its obligation, under the Equal Protection Clause of the Fourteenth Amendment to the Constitution, that state-supported educational opportunity be afforded without regard to race.

⁵³ The use of the four-day school week for majority to minority transfer students shall be discontinued.

Accordingly, it is ORDERED by the Court that the modified plan of the Educational Task Force of the Dallas Alliance filed with the Court on March 3, 1976, is hereby adopted as the Court's plan for removal of all vestiges of a dual system remaining in the Dallas Independent School District, and the school district is directed to prepare and file with the Court a student assignment plan carrying into effect the concept of said Task Force plan no later than March 24, 1976.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

MARCH 10, 1976

Appendix A Ethnic Composition of the DISD

Grade Level	Anglo	%	Black	%	Mexican-American	%	Other	%	Total
K	3254	34.8	4429	47.3	1595	17.0	87	.9	9365
1	4260	36.7	5274	45.5	1955	16.9	113	1.0	11602
2	4095	36.9	5080	45.7	1822	16.4	104	1.0	11101
3	3947	36.7	5056	46.9	1648	15.3	118	1.1	10769
4	3756	35.5	5098	48.1	1608	15.2	131	1.2	10593
5	4226	37.5	5251	46.6	1672	14.8	125	1.1	11274
6	4543	39.3	5394	46.6	1504	13.0	128	1.1	11569
7	4853	41.0	5356	45.2	1532	12.9	103	.9	11844
8	5039	42.2	5343	44.8	1438	12.1	115	1.0	11935
9	5231	43.5	5406	45.0	1286	10.7	100	.8	12023
10	5287	45.4	4943	42.5	1259	10.8	155	1.3	11644
11	4828	51.5	3526	37.5	936	10.0	93	1.0	9383
12	4704	58.7	2611	32.6	634	7.9	71	.8	8020
TOTAL	58023	41.1	62767	44.5	18889	13.4	1443	1.0	141122

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Appendix B Ethnic Percentages for Integrated Dallas Jr. High Schools

Jr. High	Year	Anglo	Black	Mexican-American
Atwell	1970	82.0%	16.6%	1.1%
	1975	34.6%	61.7%	2.9%
Browne	1970	97.6%	0.1%	1.7%
	1975	45.0%	46.5%	7.6%
Cary	1970	89.0%	2.8%	7.9%
	1975	63.0%	18.1%	17.4%
Comstock	1970	90.5%	1.3%	8.0%
	1975	24.1%	59.8%	16.0%
Florence	1970	96.8%	0.1%	2.9%
	1975	73.3%	19.4%	7.1%
Franklin	1970	98.3%	1.0%	0.5%
	1975	75.2%	22.0%	2.1%
Gaston	1970	96.9%	0.0%	2.9%
	1975	76.7%	16.4%	6.0%
Greiner	1970	85.6%	0.3%	13.5%
	1975	50.7%	12.3%	35.3%
Hill	1970	98.1%	0.0%	1.6%
	1975	83.2%	12.3%	3.5%
Hood	1970	96.9%	0.0%	3.1%
	1975	66.0%	28.4%	4.3%
Hulcy	1970	92.4%	0.2%	6.9%
	1975	16.2%	79.6%	3.9%
Long	1970	85.4%	5.2%	8.9%
	1975	63.2%	17.3%	19.0%
Marsh	1970	97.9%	0.6%	1.2%
	1975	84.6%	12.2%	2.4%
Rusk	1970	45.9%	24.5%	29.4%
	1975	25.3%	21.2%	51.4%
Rylie	1970	96.5%	0.0%	3.2%
	1975	91.5%	1.5%	6.6%
Spence	1970	24.4%	35.0%	39.8%
	1975	20.6%	25.1%	53.3%
Stockard	1970	84.6%	0.0%	14.6%
	1975	60.8%	5.7%	32.1%
Walker	1970	81.2%	17.4%	1.1%
	1975	78.2%	20.5%	0.9%

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**Ethnic Percentages for Integrated
Dallas High Schools**

<i>School</i>	<i>Year</i>	<i>Anglo</i>	<i>Black</i>	<i>Mexican- American</i>
Bryan Adams	1970	99.2%	0.0%	0.6%
	1975	86.0%	7.6%	4.5%
Adamson	1970	73.3%	7.4%	16.8%
	1975	29.3%	48.9%	19.6%
Carter	1970	96.6%	0.0%	3.1%
	1975	30.9%	65.2%	3.8%
Hillcrest	1970	98.6%	0.5%	0.7%
	1975	82.5%	15.0%	1.2%
Jefferson	1970	92.0%	2.6%	5.2%
	1975	70.0%	19.3%	12.7%
Kimball	1970	96.6%	0.1%	2.9%
	1975	62.5%	28.6%	8.0%
No. Dallas	1970	30.0%	42.7%	28.6%
	1975	17.5%	30.8%	51.2%
Samuell	1970	97.8%	0.1%	2.1%
	1975	82.5%	12.0%	5.3%
Seagoville	1970	79.7%	15.9%	4.3%
	1975	79.9%	15.4%	4.5%
Skyline	1970	94.0%	2.3%	3.0%
	1975	60.1%	33.6%	5.9%
Spruce	1970	96.5%	0.3%	3.2%
	1975	65.1%	26.9%	7.5%
Sunset	1970	88.8%	0.0%	9.4%
	1975	57.4%	8.5%	33.0%
White	1970	98.3%	0.6%	0.9%
	1975	82.6%	14.8%	1.9%
Wilson	1970	88.8%	4.3%	6.5%
	1975	62.6%	19.9%	15.9%

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS 75242**

W. M. TAYLOR, JR.
Chief Judge

March 15, 1976

TO COUNSEL:

Re: Tasby vs. Estes
CA 3-4211-C

Ladies and Gentlemen:

I enclose herewith Supplemental Order this day entered in the above case. You are advised that the last line of this Order referring to the desegregation plan for the DISD contemplates that the student assignment and non-student assignment aspects will be embodied in the Court's *Final Order*.

Yours very truly,
/s/ W. M. TAYLOR, JR.
W. M. Taylor, Jr.

Enc.

SUPPLEMENTAL ORDER

(Number and Title Omitted)

Filed: Mar. 15, 1976

During the process of fleshing out the Court's order of March 10, 1975, some questions have arisen regard-

ing the Court's adoption of the Dallas Alliance's plan. So that there is no misunderstanding in this regard, the Court intended by the order of March 10 to adopt the concepts suggested by the plan of the Educational Task Force of the Dallas Alliance. The staff of the school district shall take these concepts and adapt them to fit the characteristics of the Dallas Independent School District. The Court recognizes that during this process, a certain amount of flexibility is necessary. The Court expects the school district to put into effect the concepts of the Dallas Alliance plan. The specifics of the desegregation plan for the DISD will be embodied in the Court's Final Order which will be entered in approximately two weeks.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

SUPPLEMENTAL OPINION AND ORDER

(Number and Title Omitted)

Filed: Apr. 7, 1976

The Court has before it two motions to alter or amend its March 10, 1976, opinion and order, submitted by the Defendant DISD and by the Plaintiffs. The Court also has before it comments of the Brinegar and Strom intervenors regarding the student assign-

ment plan submitted by the DISD on March 24, 1976. The Court will not address the comments of these intervenors in this supplemental opinion, as they are dealt with in the Final Order entered this date in this case. The Court does feel it necessary, however, to respond to the motions of the initial parties to this proceeding.

A. The DISD's Motion

The DISD asks the Court to do two things: 1) approve all aspects of the approach, guidelines, standards, and interpretations made by the Defendants as to the student assignment plan prepared and filed by the DISD on March 24, 1976, and 2) accept the student assignment plan as being in compliance with the Court's opinion and order of March 10, 1976.

As to the first request, the Court is unable to approve the DISD's student assignment plan in toto. The Court has received and thoroughly considered suggestions made by various intervenors and by the Amicus Curiae Educational Task Force of the Dallas Alliance subsequent to the submission of the DISD's student assignment plan on March 24. The Court is of the opinion that many of these suggestions have merit and should be reflected in the student assignment plan. The Court has thus modified the document submitted by the DISD to incorporate many of these suggestions. It has further incorporated modifications to the student assignment plan which the Court deems necessary in order that the spirit of the Dallas Alliance's plan will be implemented to the fullest extent possible. These changes appear in the Final Order entered this day.

Through its second request the DISD asks essentially that the Court omit from the desegregation plan for the DISD any reference to non-student assignment matters, including course offerings, personnel, facilities and provisions for accountability. The Court will not hesitate to say that it taxes the Court's patience to have this objection raised again, after it was overruled time after time during the hearings, and after the Court specifically adopted the concepts embodied in the Dallas Alliance's plan regarding these matters on March 10. If the Court's response to this objection has not yet registered in the minds of the Defendants, it is this: a student assignment plan can not operate in a vacuum, and a unitary school system can not be achieved solely by mixing bodies. This Court is bound by the Constitution and by the body of caselaw in this field to see that the DISD provides *equal educational opportunity* for all its students, and the Court must necessarily be concerned about areas other than student assignment when it carries out this duty.

It is to be recalled that the Court's 1971 Order contained directives other than a bare-bones student assignment plan. In 1971, this Court had occasion to comment on the fact that the Fifth Circuit Court had found it necessary to enter specific non-student assignment orders to meet the many schemes and devices that school boards practiced in order to evade their constitutional obligation to provide equal educational opportunity. Among these, of course, were orders providing for desegregation of faculty and staff, site-selection, transportation provided to students, and course offerings. To indicate the extent

to which Courts have found it necessary to go to insure equal education, the Court would point out that in Boston the Court found it necessary to appoint a receiver to take over the operation of a school.

So that there can be no mistake about this matter the Court will state once again: it has no interest in "running the school district" or in playing the role of dictator to the School Board or Dr. Estes and his staff. However, the Court will not stand aside where the DISD has been found to operate a dual school system which discriminates between Anglo and minority schools, as was found in 1971 and as was re-emphasized in the disparity shown in Dr. Chase's report and other evidence introduced during the recent hearings. The DISD must provide equal educational opportunity for all its students, in non-student assignment matters as well as in the area of student assignment.

The DISD's motion to alter or amend the Court's Opinion and Order of March 10 is therefore in all respects denied.

B. *The Plaintiffs' Motion.*

In its motion, the Plaintiffs ask the Court to amend or clarify its March 10 opinion in three areas: 1) its finding regarding the Chase Report of a Study of Instruction in the DISD 1974-75, 2) its finding regarding K-3 children and their ability to be transported for desegregation purposes, and 3) its finding regarding the good faith of the DISD after 1971.

With regard to the first item, the Court is quite aware that one of the central findings of the Chase Report was that a disparity remains between the predominantly Anglo centers and the predominantly minority centers in the areas of (a) facilities, (b) staffing patterns, and (c) educational offerings. The Court adopted these findings of Dr. Chase on page 9 of its Opinion when it said "... there is still a gap between intent to provide equal educational opportunity and the achievement of this goal."

The Court is of the opinion that the DISD can and must correct these disparities — that is what "providing equal educational opportunity" is all about. The Court believes that the plan entered this date offers the greatest promise for actually insuring that no child in the DISD is discriminated against in the type of education he receives.

With regard to the second item, the Court will make clear that there were a number of factors that influenced the Court to adopt the K-3 Early Childhood Education concept using the diagnostic-prescriptive approach to early education. The primary reason for adopting this approach is that the Court is convinced that parental involvement and individualized instruction is invaluable at this age. The question of a child's maturity and ability to cope with being transported will of course vary with each child, and educators' opinions vary as to what is a "reasonable" age to begin transportation of children. Indeed, several educators, including Dr. Hall, testified that children could be transported as early as the first or second grade without any detrimental effect. The Court is of the

opinion however, that due to the educational benefits inherent in the early Childhood Education program, children in grades K-3 will be best served by having the parental and community involvement which is made possible by remaining in neighborhood schools.

Plaintiffs' third request deals with the finding by the Court that the DISD acted in good faith after 1971. By that finding the Court showed its awareness of some of the efforts of the DISD to provide better educational opportunities for students in predominantly minority schools. As Dr. Chase pointed out, some of the best schools in this school system are in predominantly minority areas. This is not to say, however, that the DISD has accomplished everything that it could have accomplished had it vigorously implemented the "Confluence of Cultures" program. Nor is this to say that disparity does not now exist between some schools. And, in the light of recent actions of the School Board which appear to seek the dilution of the expressed intention of the Court regarding equal educational opportunity, one wonders whether the establishment of a unitary school system and the provision of equal educational opportunity is in fact being pursued in good faith.

The conduct of the School Board members and the DISD administration in the months and years to come will answer that question. This Court sincerely hopes that every member of this community will have no hesitation in saying that the DISD has implemented this Order to the fullest extent and has done so in utmost good faith.

The final Order this day entered answers some of Plaintiffs' suggestions regarding the plan to be implemented, and this Supplemental Opinion and Order is intended as a clarification, where deemed necessary of the Court's March 10 Opinion and Order.

C. Conclusion.

The Court believes that unique opportunity is available to the DISD to desegregate without undue disruption and at the same time to provide a model of quality education for all. It is time for all parties to cast a statesman-like eye on the future of Dallas in light of the reality of the requirement to desegregate. The success of a desegregation plan, like the future of a city, is in many respects a self-fulfilling prophecy. It is time for all parties to look past the political expediency of the present to the hope of the future for Dallas and to prophesy idealistically. The Court strongly believes that the citizens of Dallas will join hands in the joint pursuit of our common ideal — the provision of an unsurpassed educational opportunity for all the children of Dallas.

It is so ORDERED, this, the 7th day of April, 1976.

/s/ W. M. TAYLOR, JR.
United States District
Judge

FINAL ORDER

(Number and Title Omitted)

Filed: Apr. 7, 1976

On March 10, 1976, after hearing evidence and arguments of counsel, the Court entered an Opinion and Order adopting the concepts embodied in the desegregation plan of the Educational Task Force of the Dallas Alliance. In order to carry out these concepts, the School Board of the Dallas Independent School District (DISD) is ORDERED and DIRECTED to implement the following items:

I. Major Sub-Districts

The DISD shall utilize six sub-districts for student assignment purposes with each having approximately the racial makeup plus or minus 5 percent of the DISD as a whole, with the exception of East Oak Cliff (referred to previously as South Oak Cliff) and Seagoville.

The boundaries for the six areas are as follows:

1. Northwest Sub-District — The boundary is the Dallas-Fort Worth Toll Road commencing at the western boundary of the DISD and extending east to Hampton Road; Hampton Road north to Singleton; Singleton east to Vilbig; Vilbig north to Morris; Morris east to Sylvan; Sylvan north to the Trinity River; the

Trinity River north to the Texas & Pacific Railroad; east on the Texas & Pacific Railroad and Pacific Street to Pearl Expressway; south on Pearl Expressway to Commerce Street; east on Commerce Street to the Santa Fe Railroad; south on the Santa Fe Railroad to Central Expressway; northwest on Central Expressway to Live Oak; northeast on Live Oak to Haskell; southeast on Haskell to Swiss; northeast on Swiss to Beacon; northwest on Beacon to Lindell; west on Lindell to Hubert; north on Hubert to Lewis; west on Lewis to Greenville; north on Greenville to Miller; west on Miller to McMillan; north on McMillan to the alley between Morningside and McCommas; west on the alley between Morningside and McCommas to Central Expressway; north on Central Expressway to Lovers Lane; east on Lovers Lane to Skillman; south on Skillman to the Missouri-Kansas-Texas Railroad; east on the Missouri-Kansas-Texas Railroad to Abrams Road; south on Abrams Road to Mockingbird Lane; northeast on Mockingbird Lane to Whiterock Creek.

2. Northeast Sub-District — The western boundary of the northeast sub-district is the same as the eastern boundary of the northwest sub-district. The southern boundary is the Trinity River from the Dallas-Fort Worth Toll Road southeast on the Trinity River to the Central Expressway (U.S. 75); north on Central Expressway to Harding; northeast on Harding to Brigham; southeast on Brigham to spur

railroad; east on spur railroad to Rosine; northwest on Rosine to Pine; northeast on Pine to Electra; northwest on Electra to Rutledge; northeast on Rutledge to Scyene; east on Scyene to Spring; northeast on Spring to Cross; northwest on Cross to Fitzhugh; northeast on Fitzhugh to Seattle; northwest on Seattle to Birmingham; northeast on Birmingham to Texas & Pacific Railroad; southeast on Texas & Pacific Railroad to Foreman; southwest on Foreman (extended) to Scyene; east on Scyene to Buckner; north on Buckner to Military Parkway; east on Military Parkway to eastern boundary of DISD.

3. Southeast Sub-District — The northern boundary of the southeast sub-district is the same as the southern boundary of the northeast sub-district. The western boundary beginning at Central Expressway and the Trinity River; southeast along the Trinity River to the northern boundary of the Seagoville area; eastward along the northern boundary of the Seagoville area to the DISD boundary.

4. East Oak Cliff Sub-District — The eastern boundary of the East Oak Cliff sub-district begins at the District line and the Trinity River and extends northwesterly along the Trinity River to Interstate 35; Interstate 35 south to DISD boundary.

5. Southwest Sub-District — The eastern boundary of the southwest sub-district is the

same as the western boundary of the East Oak Cliff sub-district and the northern boundary is the same as the southern boundary of the northwest sub-district.

6. Seagoville Sub-District — The northern boundary of the Seagoville area is Jordan and Alexander Roads extended to the District boundary.

II. *Student Assignment Criteria Within Sub-Districts*

The following criteria shall be used to incorporate the concepts embodied in the Court's Opinion and Order of March 10, 1976:

1. The DISD is divided into six sub-districts, reflecting generally the Northwest, Northeast, Southeast, East Oak Cliff, Southwest, and Seagoville geographical sections of the District.

2. With the exception of East Oak Cliff and Seagoville, the Anglo combined minority ratio of the DISD is approximated in each sub-district plus or minus five percent.

3. Grade level configurations are standardized throughout the district to include grade K-3 Early Childhood Education Centers, grade 4-6 Intermediate Schools, grade 7-8 Middle Schools, and grade 9-12 High Schools. Certain buildings house K-3 Early Childhood Education Centers and 4-6 Intermediate Schools.

4. Where possible, present student assignments are retained in naturally integrated areas, but grade configurations are standardized.

5. Students are assigned to school buildings appropriate to their age and number and to program needs, with relocatable buildings being used where necessary.

6. Students in kindergarten and grades 1-3 are assigned according to present elementary assignment patterns except that K-3 students in Booker T. Washington have been assigned to Wm. B. Travis, and K-3 students in Stephen F. Austin have been assigned to David Crockett. If there is no school within two miles, students are assigned to the next nearest appropriate school.

7. Generally students in grades 4-8 are assigned to centers in areas of centrality. A less central location is used where the location will meet the ethnic makeup of the sub-district or where facilities requirements prohibit a more central location.

8. Transportation distance and time are minimized to the extent possible.

9. Voluntary enrollment, District-wide, is provided in Vanguard schools for grades 4-6, in Academies for grades 7-8, and in magnet schools for grades 9-12.

10. Attention is focused on Vanguard and Academy programming available in the East Oak Cliff sub-district on the 4-8 level.

11. For students in grades 9-12 who do not desire to attend a comprehensive magnet high school or participate in one of the transfer programs, the traditional high school in their regular attendance zone will constitute their assigned school.

Appendix A, attached hereto, provides student assignments for the 1976-1977 school year, together with figures and percentages.

III. *The K-3 Early Childhood Education Centers*

The DISD shall provide a comprehensive program of instruction in all areas based on the developmental needs of young children and the District's Baseline Curriculum Program. The K-3 approach shall be primarily diagnostic-prescriptive. The approach in the DISD Baseline Curriculum implementation shall include:

1. Individualization of instruction.
2. Principal and staff planning for implementing the DISD Baseline Curriculum Program in each school, in conjunction with parent advisory committees at each school site.

3. Reduction of the adult-pupil ratio from the existing district-wide ratio through tutoring, the use of parents, other adult volunteers, older students and the addition of paraprofessionals. The adult-student ratio of 1-10 shall be the goal to be achieved as rapidly as possible.

4. Continuation of a Staff Development Program consistent with the State Board of Education Plan and conducted to implement the DISD Baseline Curriculum, to meet early childhood education needs and to further the individualization of instruction. This training shall involve parents in participating roles.

5. Effective partnerships with community groups, business and other agencies which serve young children.

6. Efforts to maximize the involvement of parents in planning, reinforcing and complementing their children's learning.

7. Use of the local Early Childhood Education Center as the administrative unit which has primary responsibility for delivering quality learning experiences.

In order to further develop, refine and extend the District's program for early childhood education, the DISD will establish in 1976-1977 at least two exemplary development and demonstration classes for children in the East Oak Cliff sub-district. The DISD shall continue

to develop prototypic enrichment programs, such as those at the Paul L. Dunbar and the William B. Travis Centers, for K-3 students.

Booker T. Washington School, scheduled for possible use as a Math-Science Magnet, shall be closed as an elementary K-6 school and its K-3 students reassigned to the Wm. B. Travis School. Stephen F. Austin School, scheduled for possible use as a Medical Professions Magnet, shall be closed as an elementary K-6 school and its K-3 students reassigned to the David Crockett School.

In order to give priority to all schools in East Oak Cliff on the K-3 level, R. L. Thornton and T. L. Marsalis Centers shall not be used in reporting or computing the comparability report which is required by ESEA, Title I, of the United States Department of Health, Education and Welfare, Office of Education, during 1976-77, 1977-78, and 1978-79.

IV. *The 4-8 Intermediate and Middle School Centers*

The DISD shall establish intermediate school centers (4-6) and middle school centers (7-8). The instructional program in these 4-6 and 7-8 centers shall follow the DISD's Baseline Curriculum. Each principal and his staff shall develop, in conjunction with parent advisory committees in his school, plans for the implementation of this Baseline Curriculum in his school.

The DISD shall establish 4-6 Vanguard schools and 7-8 Academies as needs are identified with first priority in the East Oak Cliff area.

The 4-6 Vanguard schools shall include all students presently enrolled. For those student stations which remain, District-wide racial ratios plus or minus 10% should apply with first priority to the ethnic group(s) who are not presently represented in the school by District-wide ratio. These students may apply from anywhere in the District.

Beginning with 1976-77 the DISD shall establish 4-6 Vanguard schools at Maynard Jackson, Mark Twain, Sidney Lanier, and K. B. Polk.

The 7-8 Academies shall reserve student stations for District-wide attendance as follows: The number of Black, Mexican-American and Anglo students in each Academy shall equal the total student capacity of that school times the ratio of each group of students in the 7-8 student population in the Dallas Independent School District as of December 1, 1975, plus or minus 10 percent. Student stations shall be reserved for all groups.

For an Academy which is an add-on to a present school such as Oliver W. Holmes, the program shall operate as a "school within a

school." Students presently enrolled at Holmes shall apply in the same manner as students in other district schools. The "school within a school" shall not as such have a particular attendance zone. All 7-8 Academies shall have a District-wide attendance zone. Beginning with 1976-77 the DISD shall establish 7-8 Academies at Pearl C. Anderson, Sequoyah and Oliver Wendell Holmes.

In order to implement the Court's Order regarding 4-6 Vanguard schools and 7-8 Academies, these centers shall not be used in reporting or computing the comparability report which is required by ESEA, Title I, of the United States Department of Health, Education and Welfare, Office of Education, during 1976-77, 1977-78, 1978-79.

V. 9-12 Magnets and High Schools

The District shall establish at least four new senior high magnets in 1976 and at least three additional by 1979, as designated by DISD. The DISD shall continue its comprehensive program at existing high school sites, as well as career clusters at Skyline Career Development Center, Pinkston, Adamson, and other Career Development Centers. The new magnet schools may be selected from the following as examples:

1. A Math/Science Magnet at Booker T. Washington

2. A Child-Related Careers Magnet at City Park Elementary
3. A Health Professions Magnet utilizing Baylor Hospital facilities and Stephen F. Austin facilities
4. A Creative Arts Magnet utilizing Fair Park facilities and James Madison facilities
5. A Business and Management Academy utilizing facilities in the Central Business District and Crozier Technical High School facilities
6. A Language-Linguistic and Humanities Magnet in cooperation with the El Centro campus of the Dallas County Community College District
7. A Transportation Technology Institute utilizing former automobile sales and service facilities where available in the downtown area
8. A Comprehensive Aerospace and Transportation Magnet at Love Field.

Final decisions regarding these magnet programs shall be made by DISD after consultation with the Career Advisory Committee or other appropriate committee established by the Dallas Chamber of Commerce. The DISD has the right to make adjustments in the future in programs and building locations, subject to the requirements regarding new construction in Paragraph XIII.

The 9-12 Magnet High School programs shall be available on a voluntary basis on a full-time or part-time transfer basis for three years beginning 1976-77. Beginning 1979-80 the DISD shall require full-time attendance in comprehensive High Schools associated with any Magnet program. This shall apply to all 9-12 Magnet programs including those at Skyline. Students may transfer freely from district high schools on a term by term basis.

Any student who enters the 9-12 Magnet programs during this three year period may, if he/she desires, continue on a part-time basis until graduation.

Much of the academic work associated with a high school diploma may of necessity be offered at a central location until an adequate number of full-time students have enrolled (estimated 400) to make an academic program cost effective.

The number of Black, Mexican-American and Anglo students in each Magnet comprehensive High School shall equal the total student capacity of that school times the ratio of each group of students in the 9-12 student population in the Dallas Independent School District as of December 1, 1975, plus or minus ten percent. Student stations shall be reserved for all groups.

The Skyline, Adamson, and Pinkston High Schools shall continue to operate as com-

prehensive high schools with regular attendance zones.

As a policy these Magnet High Schools of superior quality should be opened as rapidly as they fill, so as to accommodate all students who wish to enter the Magnet High School system. In other words, the seven called for above by 1979-80 are a minimum.

When new campuses and facilities are developed, as provided in Paragraph XIII, provision shall be made for a comprehensive High School program including all extracurricula activities. In addition Interscholastic League rules shall be provided so as to enable pupils attending Magnet High Schools to participate fully in Interscholastic League activities.

Tenth and eleventh grade students enrolled in any high school during 1975-76 within the Dallas Independent School District may, in 1976-77 and 1977-78, choose to continue to attend that high school until graduation. If students were transported by the district in 1975-76, transportation will be continued for these two years.

Students presently in grades 10-11 and their parents must be informed in writing about their program and school options prior to the end of the 1975-76 school year. This informa-

tion shall provide as a minimum the following options:

- A. That a student may continue in the school he or she is presently attending, or
- B. That a student may attend the Magnet school of his or her choice, or
- C. That a student may elect to transfer under the Majority to Minority provisions, or
- D. That a student may attend school designated as his or her regular attendance zone.

If, after the 1976-77 school year, an area high school is designated as a magnet comprehensive high school, students enrolled in that school may choose to attend any school in the DISD. An exception is that the student may not select a high school which is already integrated such that it upsets the racial balance of that school as hereinabove provided in Paragraph H. The school the student selects becomes his/her assigned high school.

In order to implement this Court's order regarding 9-12 Magnet schools, these centers shall not be used in reporting or computing the comparability report which is required by ESEA, Title I, of the United States Department of Health, Education and Welfare, Office of Education during 1976-77, 1977-78, 1978-79.

VI. *Special Programs*

A. *Career Education*

The DISD shall continue to implement its career education plan, Grades 1-12, as rapidly as possible.

B. *Bilingual Education*

1. The present Bilingual Program based on the State Board of Education Plan shall be expanded as rapidly as possible to all pupils in grades K-6. State Senate Bill 121 shall serve as reference-guideline for this program's vertical (grade level) and horizontal (school site) expansion.

2. English-as-a-Second Language (ESL) programming shall be expanded as rapidly as possible to serve all Spanish-monolingual students, especially in grades 7-8 and 9-12.

C. *Multicultural Social Studies Education*

The DISD shall provide multicultural social studies educational programs for students in all grade levels.

D. *Plan A Program*

1. The Plan A Program now being provided by the DISD shall be administered according

to the State Board of Education Plan and Guidelines.

2. Students who require special instructional techniques and arrangements by reason of handicapping conditions shall be served by the DISD's special educational program, consistent with the State Board of Education Plan and Guidelines.

VII. *Majority to Minority Transfer*

The DISD shall fully advise all students of this program and encourage participation in it.

1. Prior to the beginning of each school year the District will determine for that particular school year the estimated racial composition of:

- (a) its total K-3 Early Childhood Education Center scholastic population,
- (b) its total 4-6 Intermediate School Center scholastic population,
- (c) its total Middle School Center scholastic population,
- (d) its total Senior High School scholastic population,

by percentages between Black, Mexican-American, and Anglo scholastics.

2. The terms "attendance Early Childhood Education Center," "attendance Intermediate School," "attendance Middle School," and "attendance Senior High School," as used herein shall mean the particular school to which the student would normally be assigned by the District in the absence of the operation of a special assignment program, permission, an order or a regulation, including, but not limited to, the majority to minority transfer provisions.

3. Any student assigned to a particular attendance K-3 Early Childhood Education Center serving kindergarten through third grade in which the percentage of members of his race is greater than the District-wide percentage of members of his race for Early Childhood Education Centers shall be permitted to transfer to any Early Childhood Education Center school in the School District containing his grade level in which the percentage of members of his race is less than the District-wide percentage of his race for Early Childhood Education Centers.

4. Any student assigned to a particular attendance Intermediate School serving fourth, fifth, and sixth grades in which the percentage of members of his race is greater than the District-wide percentage of members of his race for Intermediate Schools shall be permitted to transfer to any Intermediate School in the District containing his grade

level in which the percentage of members of his race is less than the District-wide percentage of members of his race for Intermediate Schools.

5. Any student assigned to a particular attendance Middle School serving seventh and eighth grades in which the percentage of members of his race is greater than the District-wide percentage of members of his race for Middle Schools shall be permitted to transfer to any Middle School in the District containing his grade level in which the percentage of members of his race is less than the District-wide percentage of members of his race for Middle Schools.

6. Any student assigned to a particular attendance Senior High School in which the percentage of members of his race is greater than the District-wide percentage of members of his race for Senior High Schools shall be permitted to transfer to any Senior High School in the District containing his grade level in which the percentage of members of his race is less than the District-wide percentage of members of his race for Senior High Schools.

7. Students requesting Majority to Minority Transfers must do so prior to one week before the beginning of the school year, and must agree to attend that school for the entire academic school year.

8. All transfers provided for in this section shall be permitted on the basis of student-station availability, and Majority to Minority Transfers will be given preference over other transfers.

9. A student's disciplinary record shall not constitute the basis for denying a Majority to Minority Transfer, nor for sending him/her back to a previously assigned school once this transfer has been made. Any discipline program shall be handled at the school to which a student has transferred.

VIII. *Minority to Majority Transfers*

Mexican-Americans who comprise less than five percent of the school to which they are originally assigned, may transfer to a school that offers the Bilingual Education Program. Transfers provided in this section shall be permitted on the basis of student-station availability.

IX. *Curriculum Transfers*

Students who are physically handicapped, mentally retarded, highly gifted, those who seek career education courses, and other special-course students, shall be permitted to attend those schools offering appropriate facilities and courses; provided that all such transfers shall be on a nondiscriminatory basis. Such transfers shall be permitted on a

space available basis with final decisions to be made by the DISD.

X. Transportation

1. All students in the Dallas Independent School District who are reassigned to a new attendance zone or who choose to attend a magnet school as their assigned school by virtue of this Court Order, shall be eligible to receive free transportation provided by the Dallas Independent School District.

2. Where at least twenty students from a given community, zone, or point of origin will be traveling to a single destination, for any reason permitted under this Order, the DISD shall provide transportation in the form of a DISD bus.

3. Where the number of students moving to a given designated school is less than twenty, transportation shall be provided in the form of special bus tokens or bus cards distributed directly to the student involved to be used on the regular Dallas Transit System (DTS) routes.

4. When the combined one-way distance between home to DTS-route and DTS-route to school exceeds 2 miles, special arrangements for transportation shall be made by DISD.

5. For those students who are transported under any of the provisions of this Court order, in the event of emergencies or illness, the school shall either arrange transportation to home or make other appropriate accommodations as deemed necessary by the school.

6. The District shall receive from the Texas Education Agency the maximum total base cost for maintenance, operations, salaries, and depreciation for each seventy-two passenger bus needed to transport students, as required by this Court order.

XI. Changes in Attendance Zones

The DISD may adjust attendance zones and reassign students as it determines to be necessary to conform to building space requirements from year to year so as to most effectively utilize facilities and/or promote further desegregation. For the 1976-1977 school year, adjustments will occur between the following attendance zones:

1. Lenore K. Hall and Leslie A. Stemmons
2. Harrell Budd and Roger Q. Mills
3. David Crockett and William Lipscomb
4. William Lipscomb and Robert E. Lee.

The DISD shall have the responsibility for informing all residents of these areas of these adjustments.

Before the beginning of the 1977-78 school year, the DISD shall review all K-3 attendance zones, and adjust them in order to achieve as much natural integration as possible, with pupils assigned two miles or less from their home. If there is no school within two miles of their home, then assign student to nearest school which would promote integration, if in so doing, the student would have to go no more than four miles from home. Dr. Josiah Hall, the Court's expert, shall be retained to advise the Court on these changes.

Demographic changes which occur subsequent to this total review and readjustment of K-3 attendance zones will not be attributed by the Court to "state action" of the DISD. Private actions which produce changes in housing patterns after 1977-78 shall not be the basis for mandating the DISD to redraw the K-3 attendance zones to reflect any particular racial balance.

XII. *Discipline and Due Process*

Good order and discipline are essential to good education and to the implementation of this plan. The DISD, in concert with teachers, principals and parents shall develop a clear and simply-stated policy on student discipline, including provision for due process procedures. All parents and students shall be fully advised by the DISD of these rules and regulations governing student conduct in the

classroom, in the school, and on the campus. These rules, regulations, and due process procedures shall be applied uniformly and fairly without discrimination.

XIII. *Facilities*

The DISD shall continue to improve school facilities in accordance with the plan which the Board of Education has developed in consultation with the Task Force for Educational Excellence.

In addition, the DISD shall take immediate steps to construct a new magnet comprehensive Lincoln High School in South Dallas.

The DISD shall make improvements in the facilities at North Dallas.

The DISD shall begin immediate construction of a new K-3 facility and community center in West Dallas for the Juarez-Douglass area. Benito Juarez and Fred Douglass shall remain open to serve grades K-2 and K-3 respectively until the new school is opened.

The DISD shall have as a priority the development of a "central core" of high schools within a two mile distance from the inner highway loop (Central Expressway on the east, East Thornton Expressway on the south, Stemmons Expressway on the west, Woodall Rogers Freeway on the north).

XIV. *Personnel*

A. *Recruiting and Employment*

1. The DISD shall develop recruiting and employment policies to insure that competent personnel are employed and that by 1979-1980 the percentages of Black and Mexican-American personnel approximate the percentages, as a minimum, of 31% Black and 8% Mexican-American within each of the following groups:

- a. teachers
- b. principals
- c. other certificated professional personnel (excluding the 142 top salaried administrators mentioned below).

2. For the top salaried administrative positions of coordinator and above (currently established at 142 in number) and for any future reorganization covering these 142 top positions, the following ethnic percentages for these positions are to be achieved by September 1, 1979: 44% Anglo, 44% Black, and 12% Mexican-American. The DISD shall achieve one-third of this transition by September 1, 1977, one-third by September 1, 1978, and the final one-third by September 1, 1979. A variance of 5% in the percentages for this top-salaried group shall be permitted. At all times after September 1, 1979, the

Anglo/Black percentages are to remain equal. However, both will decrease if the percentage of the Mexican-American enrollment in the DISD increases above 12%. (For example, if the Mexican-American enrollment increases to 14%, Anglo and Black would each decrease to 43%.)

3. The DISD may rely on expanded scope of positions, lateral reassignments, promotion and attrition to meet the goals of the above two paragraphs. If there is to be a reduction in the number of principals, teachers, teachers aids, or other staff employed by the DISD which will result in a dismissal or demotion of any such staff member, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. Under no circumstances will staff be terminated or promoted solely on the basis of race.

B. *Personnel Competence Assessment*

The competence of personnel shall continually be assessed in accordance with policies and procedures established by the DISD.

C. *Teacher and Principal Assignments*

Assignments for teachers and principals shall be made in accordance with *Singleton v. Jackson Municipal Separate School District*,

419 F.2d 1211 (5th Cir. 1970). However, if the needs assessment of a given school clearly demonstrates that special circumstances exist and that deviations from the above requirements are necessary in order to best staff and administer the programs in predominately minority schools on such programs as special, vocational and bilingual education, in any school, the DISD shall have the discretion to assign minority teachers to these schools at variance with the respective percentages established by *Singleton*.

D. Training

In depth training of teachers, principals and administrators shall be provided as needed to implement this plan. Attendance shall be required.

XV. Accountability System and Auditor

A. Internal Accountability

The DISD shall file a report with the Court on December 15 and April 15 annually through the school year 1978-79 which includes the following:

1. The number and percentage of pupils by ethnicity attending each educational center, including Vanguard schools, Academies and Magnet high schools

2. The number and percentage of pupils by ethnicity being transported for desegregation purposes to 4-6 and 7-8 centers and to Vanguard schools, Academies and Magnet high schools

3. Majority to Minority transfers:

- a. The number and percentage of pupils by ethnicity and by school participating in this program
- b. The transportation facilities available and convenience of transportation
- c. Efforts made by the DISD to increase participation in this program.

4. The number and percentage of Mexican-American pupils participating in the minority to majority transfer program.

5. The status of the following programs:

- a. The Early Childhood Education Program (K-3)
- b. 4-8 Vanguard and Academy Programs
- c. 9-12 Magnet Programs
 - (1) Efforts of the DISD to encourage student enrollment in magnet programs

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- (2) Course offerings in each of the magnet programs in operation
 - (3) The progress of increasing the number of magnet schools and their location in terms of the timetable set forth in this order.
 - d. The Bilingual Program
 - e. The Multicultural Social Studies Program
6. The number and percentage of teachers by ethnicity assigned full time in each educational center, including Vanguard schools, Academies and Magnet schools.
7. The progress toward affirmative action in attaining the recruiting and employment goal, including the number and percentage of new teachers and administrators by ethnicity engaged by the DISD.
8. The current status of capital outlay projects, and the allocation of bond issue funds in relation to the priorities and programs established by this order.
9. The results of the annual standardized achievement tests program by school, grade (grades 2, 4, 6, 8, 9 and 12), and ethnicity.
10. Efforts made by the DISD to successfully implement the Order of this Court, in the following areas:

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- a. Parent involvement efforts
- b. Staff development programs
- c. Communications and community relations programs
- d. Student leadership training programs
- e. Safety and security (including due process procedures).

B. *External Educational Audit*

An external educational auditor shall be appointed and instructed by the Court. It shall be a non-political, professional entity, adequately funded, and paid for by the DISD. It shall file a report with the Court annually on June 1 until the 1978-79 school year which includes the following:

- 1. An audit of each item of the internal accountability report
- 2. An audit of DISD treatment of a selected sampling of predominantly minority and predominantly Anglo centers (K-3 and 9-12 non-magnet centers) in terms of:
 - a. Condition of facilities
 - b. Educational offerings: course offerings and teacher allocation
 - c. Educational resource allocation in terms of textbooks, libraries, sup-

- plies, tutoring efforts and aids, and extracurricular offerings funded by the DISD
- d. Efforts of the DISD to implement schoolsite planning involving principals, teachers, parents and community in ECE program
 - e. Efforts to encourage parent and community participation in the educational process on the 9-12 level.
 - f. Any other items about which the Court may instruct it.

The results of this external educational audit shall be publicized in the DISD newsletter and the complete audit shall be made available to the public and to all parents or guardians of students in the DISD. Any party to this suit who desires to make comments or be heard regarding the content of the internal accountability reports or the external educational audit may file such comments or motion within thirty days after the filing of the external educational auditor's report on June 1.

XVI. *Tri-Ethnic Committee*

The Tri-Ethnic Committee provided for in the Court's 1971 Order shall continue to receive input from the community regarding the desegregation of the DISD. The Committee shall make reports to this Court at such times as the Committee deems necessary. These

reports will advise the Court as to the implementation of this Order, and such other matters as the Court may deem to be proper. A copy of all reports shall be provided to the DISD and the Plaintiffs.

Tri-Ethnic Committee members shall be appointed by the Court for staggered two-year terms beginning July 1, 1976. Lots shall be drawn to determine which members will serve for a one-year term beginning July 1, 1976, and which members will serve for a two-year term beginning July 1, 1976.

XVII. *Retention of Jurisdiction*

To the end that a unitary school shall be achieved in the DISD, the United States District Court for the Northern District of Texas retains jurisdiction of this case.

It is so ORDERED, this the 7th day of April, 1976.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

APPENDIX A

The pupil population for the six areas, grades K-12 by ethnic group utilizing the December 1, 1975 pupil population figures is as follows:

Sub-districts	84a				Combined Min. %	Total
	Anglo- %	Black %	M/A %	%		
Southwest	12,250	8,234	6,169	30.9	54.0	26,653
Northwest	16,590	10,031	7,298	29.6	51.1	33,919
Northeast	16,019	10,411	2,865	35.5	44.3	29,295
Southeast	12,253	7,551	1,666	35.2	42.9	21,470
Sub-Total	57,112	36,227	17,998	32.5	48.7	111,337
East Oak Cliff	512	26,202	783	35.3	98.1	27,497
Seagoville	1,842	338	108	14.8	4.7	2,288
GRAND TOTAL	59,466	62,767	18,889	44.5	57.9	141,122

NORTHWEST SUB-DISTRICT NORTHWEST

School	K-3				Minority %	Total	Bldg. Cap.
	Anglo No.	Black No.	M-A No.	%			
Nathan Adams	177	16	2	8.2	9.2	195	800
Gabe P. Allen	69	32	647	4.3	90.8	748	1000
Arlington Park	2	99	3	95.2	98.1	104	350
James B. Bonham	72	3	284	.8	79.9	359	400
C. F. Carr	3	498	17	96.1	99.4	518	800
George W. Carver	1	330	30	91.4	99.7	361	1700
George B. Dealey	145	9	2	5.8	7.1	156	800
Amelia Earhart	0	372	1	99.7	100.0	373	800
James Fannin	96	75	407	13.0	83.4	578	400
Tom C. Gooch	299	2	7	.6	2.9	308	800
Sam Houston	64	44	204	14.1	79.5	312	700
Arthur Kramer	133	1	2	.7	2.2	136	800
J. W. Ray	0	311	3	99.0	100.0	314	400
William B. Travis	5	95	171	35.0	98.1	271	800
Harry C. Withers	183	0	4	-0-	2.1	187	800
William L. Cabell	311	2	10	.6	3.7	323	1300
DeGolyer, E. L.	175	2	4	1.1	1.3	181	800
Navarro, Jose	0	619	29	95.5	100.0	648	750
Tyler, Priscilla	0	443	2	99.5	100.0	445	750

NORTHWEST

4-5-6

School	K-3*	Anglo		Black		M-A		Minority		Total	Bldg. Cap.
		No.	%	No.	%	No.	%	%	%		
Burnet, D. G.	495	592	52.3	432	38.1	109	9.6	47.7	1628	1350	
Caillet, F. P.	275	238	40.1	109	18.4	246	41.5	59.9	868	800	
Foster, S. C.	296	347	49.3	100	14.2	257	36.5	50.7	1000	800	
Longfellow, H. W.	112	323	46.3	326	46.7	49	7.0	53.7	810	800	
Maple Lawn	296	149	29.6	108	21.5	246	48.9	70.4	503	700	
Marcus, H.	253	197	40.1	30	6.1	264	53.8	59.9	744	800	
Pershing, J. J.	168	279	40.0	410	58.8	8	1.2	60.0	865	800	
Polk, K. B.**	189	0	0	249	100.0	0	0	100.0	438	800	
Preston Hollow	142	151	40.9	86	23.3	132	35.8	59.1	511	1000	
Rogers, D. D.	287	290	42.8	190	28.1	197	29.1	57.2	964	800	
Williams, S. L.	109	339	42.4	444	55.5	17	2.1	57.6	909	800	
Field, T.	114	58	76.3	2	2.6	16	21.1	23.7	190	500	
Knight, O.	376	89	37.2	3	1.3	147	61.5	62.8	615	650	
Milam, B.	88	20	40.0	3	6.0	27	54.0	60.0	138	800	
Hotchkiss, L. L.	173	181	42.2	30	7.0	218	50.8	57.8	602	800	
Walnut Hill	165	339	59.4	211	37.0	21	3.6	40.6	736	800	

* K-3 students are not included in the ethnic ratios for grades 4-5-6.

** K. B. Polk School will be a 4-6 Vanguard School and 300 student stations will be reserved for integration purposes. Programming will be provided from 7:00 a.m. to 7:00 p.m.

87a

NORTHWEST

Feeder Schools for 4-5-6 Centers

Burnet	Pershing
Burnet	Pershing
Cabell	Dealey
Carr	Carver/Tyler*
Caillet	Walnut Hill
Caillet	Walnut Hill
Allen, G.*	Adams, N.
Arlington Park	Carver, Tyler*
Foster	Preston Hollow
Foster	Preston Hollow
Houston	Travis (includes
Carver/Tyler*	the former B.T.
DeGolyer	Washington zone)
Longfellow	Rogers
Longfellow	Rogers
Withers	Ray
Kramer	Bonham
Earhart/Navarro*	Williams
Maple Lawn	Williams
Marcus	Gooch
Marcus	Earhart/Navarro*
Allen, G.*	Field
Hotchkiss	Knight
Hotchkiss	Milam
Fannin	Polk

* Assigned to more than one school

**NORTHWEST
Middle Schools
7-8**

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Cary, Edward H.	521	51.8	343	34.1	142	14.1	48.2	1006	1500
Marsh, Thos. C.	776	55.5	307	22.0	314	22.5	44.5	1397	1700
Rusk, T. J.	446	55.7	103	12.8	252	31.5	44.3	801	1000
Spence, Alex*	162	23.0	170	24.1	373	52.9	77.0	705	1000
Walker, E. D.	881	51.9	794	46.8	23	1.3	48.1	1698	2000

* Children enrolled in the program for the deaf are included.

**89a
NORTHWEST**

Feeder Schools for 7-8 Grade Centers

Edward H. Cary

Alex Spence

Foster

Bonham

Burnet

Fannin

Williams

Travis (includes

Longfellow

former B.T. Wash-
ington zone)

Polk

Milam

Walnut Hill

Field

Earhart/Navarro*

E. D. Walker

Thomas C. Marsh

Adams, N.

Dealey

DeGolyer

Pershing

Cabell

Withers (East of Midway)

Allen

Carver/Tyler

Withers (West of
Midway)

Kramer

Gooch

Hotchkiss

Earhart/Navarro*

Rogers

Preston Hollow

Ray

Carr

Thomas J. Rusk

Knight

Maple Lawn

Houston

Arlington Park

Marcus

Caillet

* Assigned to more than one school

NORTHWEST

Senior High Schools

9-12

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%	%		90a
Hillcrest*	1634	96.2	38	2.2	27	1.6	3.8	1249*	1800
Thos. Jefferson	1583	68.4	465	20.1	267	11.5	21.6	2315	2100
North Dallas	280	17.2	620	38.1	728	44.7	82.8	1628	1100
L. G. Pinkston**	108	4.9	1506	68.2	594	26.9	95.1	1633**	3000
W. T. White	2585	96.1	43	1.6	61	2.3	3.9	2689	2600

- * The former Franklin school will house 450 ninth grade students from Hillcrest High School.
- ** The former Edison school will house 575 ninth grade students from L. G. Pinkston High School.

91a

NORTHWEST

Feeder Schools for Senior High Schools

Hillcrest

Dealey, G. B.
Hotchkiss, L. L.
Kramer, Arthur
Pershing, J. J.
Preston Hollow
Rogers, Dan

L. G. Pinkston

Allen, Gabe
Carr, C. F.
Carver, G. W.
Earhart, Amelia
Navarro, Jose
Tyler, P. L.

Thomas Jefferson

Burnet, David G.
Caillet, F. P.
Field, Tom
Foster, S. C.
Longfellow, H. W.
Polk, K. B.
Walnut Hill
Williams, Sudie

W. T. White

Adams, Nathan
Cabell, W. L.
DeGolyer, E. L.
Gooch, Tom C.
Marcus, Herbert
Withers, H. C.

North Dallas

Arlington Park
Bonham, J. B.
Fannin, James W.
Houston, Sam
Knight, Obadiah
Maple Lawn
Milam, Ben
Ray, J. W.
Travis, W. B. (includes
former B. T.
Washington zone)

NORTHEAST SUB-DISTRICT

NORTHEAST K-3

School	Anglo		Black		M-A		Minority		Total	Bldg. Cap.
	No.	%	No.	%	No.	%	%	%		
Brown, John H.	0	0	523	100.0	0	0	100.0	100.0	523	800
City Park	6	3.9	85	55.6	62	40.5	96.1	96.1	153	800
Colonial	0	0	434	100.0	0	0	100.0	100.0	434	900
Frazier	0	0	454	100.0	0	0	100.0	100.0	454	900
Gill	264	91.7	0	0	24	8.3	8.3	8.3	288	800
Harris	0	0	159	100.0	0	0	100.0	100.0	159	550
Hassell	0	0	229	100.0	0	0	100.0	100.0	229	550
Hexter	170	93.9	0	0	11	6.1	6.1	6.1	181	800
Rice	0	0	497	100.0	0	0	100.0	100.0	497	1100
Wheatley	0	0	202	100.0	0	0	100.0	100.0	202	400
Reilly	289	92.9	6	1.9	16	5.2	7.1	7.1	311	1250
Casa View	303	86.3	1	.3	47	13.4	13.7	13.7	351	1250
Urban Park	200	88.9	3	1.3	22	9.8	11.1	11.1	225	800
Kiest	299	89.8	5	1.5	29	8.7	10.2	10.2	333	1250

92a

NORTHEAST 4-5-6

4-5-6

School	K-3*	Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
		No.	%	No.	%	No.	%			
Bayles	260	206	54.2	169	44.5	5	1.3	45.8	640	800
Conner	250	524	56.3	378	40.7	28	3.0	43.7	1180	800
Jackson, S.**	81	103	67.3	48	31.4	2	1.3	32.7	234	800
Lakewood	193	396	61.9	160	25.0	84	13.1	38.1	833	800
Mt. Auburn	287	97	38.0	89	34.9	69	27.1	62.0	542	700
Rowe, E.	313	420	53.4	330	42.0	36	4.6	46.6	1099	800
Sanger, Alex	244	385	53.8	290	40.6	40	5.6	46.2	959	800
Lee, Robt. E.	205	68	47.6	0	0	75	52.4	52.4	348	800
Lipscomb	461	175	50.1	17	4.9	157	45.0	49.9	810	800
Crockett	491	74	42.8	14	8.1	85	41.1	49.2	664	400
Silberstein	217	115	58.1	69	34.9	14	7.0	41.9	415	800
Reinhardt	295	499	58.1	315	36.7	44	5.2	41.9	1153	1250
Truett	352	446	52.9	367	43.5	30	3.6	47.1	1195	1300
Roberts	319	6	2.5	179	75.2	53	22.3	97.5	557	600

93a

- * K-3 students are not included in the ethnic ratios for grades 4-5-6.
- ** Children enrolled in the program for the deaf are included.

94a

NORTHEAST

Feeder Schools for 4-5-6 Centers

Bayles	Reinhardt
Bayles	Reinhardt
Hassell	Gill
	Colonial
Conner	Rowe
Reilly	Rowe
Brown	Urban Park
Conner	Frazier
Crockett	Sanger
	Sanger
Jackson, S.	Casa View
	Wheatley
	Harris
Lakewood	
Lakewood	Silberstein
Kiest	
City Park	
Austin	Truett
	Truett
Lee, R.	Hexter
	Rice
Lipscomb	
Roberts	Mount Auburn

95a

NORTHEAST

Middle Schools

7-8

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
W. H. Gaston	942	56.6	645	38.7	78	4.7	43.4	1665	1700
Robert T. Hill	736	61.1	410	34.0	59	4.9	38.9	1205	1400
J. L. Long	656	58.0	195	17.2	280	24.8	42.0	1131	1400

96a

NORTHEAST

Feeder Schools for 7-8 Grade Centers

W. H. Gaston

J. L. Long

Brown, J. H.

Bayles

City Park

Crockett, David

Colonial

Lakewood

Conner, S. S.

Lee, Robert E.

Hassell, T. C.

Lipscomb, W. L.

Kiest, E. J.

Jackson, Stonewall

Reinhardt

Mount Auburn

Sanger, Alex

Sanger, Alex

(East of St.

(West of St.

Francis)

Francis)

Truett, G. W.

Roberts, O. M.

Austin, Stephen F.

Robert T. Hill

Casa View

Harris, F. C.

Hexter, Victor

Gill, C. A.

Rice, Charles

Reilly, M. T.

Wheatley, Phyllis

NORTHEAST

Senior High Schools
9-12

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Bryan Adams	3240	95.2	0	0	163	4.8	4.8	3403	3500
James Madison	0	0	1685	98.1	30	1.7	99.8	1715	2100
Skyline	2040	64.6	925	29.3	193	6.1	35.4	3158	4000
Woodrow Wilson	888	59.0	287	19.0	331	22.0	41.0	1506	1500

97a

98a

NORTHEAST

Feeder Schools for Senior High Schools

9-12

Bryan Adams	Skyline
Casa View	Bayles
Conner, S. S. (North of Ferguson)	Conner, S. S. (South of Ferguson)
Hexter, Victor	Rowe, Edna
Gill, Charles A.	Sanger, Alex (West of St. Francis)
Kiest, E. J.	Silberstein, Ascher
Reilly, M. T.	Urban Park
Reinhardt	
Sanger, Alex (East of St. Francis)	
Truett, G. W.	
James Madison	Woodrow Wilson
Brown, John H.	Crockett, David
City Park	Lakewood
Colonial	Lee, Robert E.
Frazier, J. C.	Lipscomb, W. H.
Harris, F. C.	Jackson, Stonewall
Hassell, T. C.	Mount Auburn
Rice, Charles	Roberts, O. M.
Wheatley, Phyllis	
Austin, Stephen F.	

SOUTHEAST SUB-DISTRICT

SOUTHEAST
K-3

School	Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Buckner	93	12.0	490	63.0	194	25.0	88.0	777	750
Dunbar	0	0	700	100.0	0	0	100.0	700	1000
Lagow	447	92.0	6	1.2	33	6.8	8.0	486	800
Macon	221	85.0	2	.8	37	14.2	15.0	260	450
Rhoads	0	0	441	100.0	0	0	100.0	441	1200
Runyon	312	87.4	18	5.0	27	7.6	12.6	357	800
Thompson	0	0	521	100.0	0	0	100.0	521	1700
Titche	249	85.6	18	6.2	24	8.2	14.4	291	800
Anderson, Wm.	305	85.4	10	2.8	42	11.8	14.6	357	800
Moseley	340	93.2	0	0	25	6.8	6.8	365	800

SOUTHEAST

4-5-6

School	K-3*	Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
		No.	%	No.	%	No.	%			
Ireland	283	347	63.5	157	28.8	42	7.7	36.5	829	800
San Jacinto	292	386	51.5	333	44.4	31	4.1	48.5	1042	800
Hawthorne	165	316	57.9	201	36.8	29	5.3	42.1	711	800
Adams, J. Q.	402	469	57.7	266	32.8	77	9.5	42.3	1214	1000
Rylie	0	406	57.5	244	34.6	56	7.9	42.5	706	800
Blair	483	123	34.5	194	54.3	40	11.2	65.5	840	800
Blanton	304	219	57.2	154	40.2	10	2.6	42.8	687	800
Dorsey	167	161	54.0	77	25.9	60	20.1	46.0	465	800
Burleson	0	282	57.7	150	30.7	57	11.6	42.3	489	800

100a

* K-3 students are not included in the ethnic ratios for grades 4-5-6

101a

SOUTHEAST

Feeder Schools for 4-5-6 Centers

Ireland	Adams, J. Q.
Ireland	Adams
Macon	Anderson, Wm.
Thompson*	Thompson*
San Jacinto	Rylie
San Jacinto	Lagow
Rhoads	Buckner/Burleson*
Titche	
Hawthorne	Blair
Hawthorne	
Dunbar	Burleson
Runyon	Moseley
	Buckner/Burleson*
Blanton	Dorsey
Blanton	Dorsey
Dunbar	Buckner/Burleson*

* Assigned to more than one school

SOUTHEAST
Middle Schools
7-8

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Hood, J. B.	839	60.4	514	37.0	36	2.6	39.6	1389	2500
Florence, Fred	795	59.2	482	35.9	66	4.9	40.8	1343	1700
Comstock	800	58.6	403	29.5	163	11.9	41.4	1366	1700

102a

103a

SOUTHEAST

Feeder Schools for 7-8 Grade Centers

Hood

Blanton
Hawthorne
San Jacinto
Ireland (North
of Lake June)
Silberstein
Urban Park
Rowe
Frazier
Rhoads

Comstock

Buckner/Burleson
Blair
Dorsey
Moseley
Lagow
Ireland (South
of Lake June)
Adams, J. Q.
(West of Buckner)
Macon (South of
Elam Road)

Florence

Adams, J. Q.
(East of Buckner)
Runyon
Anderson, Wm.
Thompson
Titche
Dunbar
Macon (North
of Elam Road)

SOUTHEAST
Senior High Schools
9-12

School	Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Lincoln	0	0	1380	100.0	0	0	100.0	1380	2100
W. W. Samuell*	1850	89.0	89	4.3	140	6.7	11.0	2079	3000
H. Grady Spruce	1667	71.7	412	17.7	246	10.6	28.3	2325	3000

104a

* Children enrolled in the program for the deaf are included.

105a

SOUTHEAST

Feeder Schools for Senior High Schools

Lincoln

Dunbar, Paul
Rhoads, J. J.
Thompson, H. W.

H. Grady Spruce

Adams, J. Q.
(South of Lake June)
Anderson, Wm.
Blair, W. A.
Buckner/Burleson
Dorsey, Julius
Ireland, John (South
of Lake June)
Macon, B. H.
Moseley, Nancy
Runyon (South
of Lake June)
Lagow, Richard

W. W. Samuell

Adams, J. Q. (North
of Lake June)
Blanton, A. W.
Hawthorne, Nathaniel
Ireland (North of
Lake June)
Runyon, John (North
of Lake June)
Titche, Edward
San Jacinto

SOUTHWEST SUB-DISTRICT

SOUTHWEST

K-3; K-2

106a

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Douglass K-3	5	3.2	63	39.6	91	57.2	96.8	159	400
Juarez K-2	8	5.4	22	21.8	107	72.8	94.6	137	200

SOUTHWEST

4-5-6

107a

School	K-3*	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
		No.	%	No.	%	No.	%			
Birdie Alexander	263	35	12.7	234	84.8	7	2.5	87.3	539	800
Arcadia Park	222	118	72.4	0	0	45	27.6	27.6	385	400
J. W. Carpenter	218	132	69.5	47	24.7	11	5.8	30.5	408	800
N. J. Cochran	309	108	51.4	64	30.5	38	18.1	48.6	578	800
L. P. Cowart	344	139	52.5	1	.4	125	47.1	47.5	595	800
J. Davis	323	81	33.3	126	51.9	36	14.8	66.7	566	800
L. O. Donald	278	139	60.4	0	0	91	39.6	39.6	508	800
L. K. Hall	417	183	55.5	59	17.9	88	26.7	24.6	747	800
M. B. Henderson	324	130	58.6	40	18.0	52	23.4	41.4	546	800
J. S. Hogg	172	39	37.9	7	6.8	57	55.3	62.1	275	400
Lida Hooe	316	136	61.6	2	.9	85	38.5	39.4	537	500
Anson Jones	330	119	49.8	7	2.9	113	47.3	50.2	569	400
Umphrey Lee	500	31	7.8	352	88.9	13	3.3	92.2	896	800
George Peabody	234	80	43.7	-0-	-0-	103	56.3	56.3	417	500
J. Peeler	259	40	25.0	8	5.0	112	70.0	75.0	419	400
J. H. Reagan	279	70	41.9	-0-	-0-	97	58.1	58.1	446	400
Rosemont	340	159	59.8	22	8.3	85	31.9	40.2	606	750
L. A. Stemmons	308	230	69.9	14	4.3	85	25.8	30.1	639	800
Stevens Park	240	110	53.9	39	19.1	55	27.0	46.1	444	800
T. G. Terry	356	112	32.8	196	57.5	33	9.7	67.2	697	800
Adelle Turner	257	116	44.8	142	54.8	1	.4	55.2	516	800
Mark Twain**	270	41	16.9	196	81.0	5	2.1	83.1	512	800

* K-3 Students are not included in the ethnic ratios for grades 4-5-6.

** Mark Twain School will be a 4-6 Vanguard School and 250 student stations will be reserved for integration purposes. Programming will be provided from 7:00 a.m. to 7:00 p.m.

SOUTHWEST

4-5-6

108a

School	K-3*		Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
	No.	%	No.	%	No.	%	No.	%			
Daniel Webster	404		194	56.2	124	35.9	27	7.8	43.7	749	800
Martin Weiss	251		97	55.4	56	32.0	22	12.6	44.6	426	800
Winnetka	248		98	49.8	6	3.0	93	47.2	50.2	445	400
Lanier**	272		76	12.3	100	16.1	444	71.6	87.7	620	800

108a

- * K-3 students are not included in the ethnic ratios for grades 4-5-6.
- ** Sidney Lanier School will be a 4-6 Vanguard School and 250 student stations will be reserved for integration purposes. Programming will be from 7:00 a.m. to 7:00 p.m.

SOUTHWEST Middle Schools

7-8

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
William H. Atwell	245	45.5	273	50.6	21	3.9	54.5	539	1700
T. W. Browne	570	58.3	308	31.5	99	10.2	41.7	977	1700
D. A. Hulcy	150	24.3	423	68.7	43	7.0	75.7	616	2500
L. V. Stockard	605	54.3	65	5.9	439	38.8	44.7	1109	1400
W. E. Greiner	624	57.1	77	7.0	392	35.9	42.9	1093	1300

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SOUTHWEST

Feeder Schools for 7-8 Grade Centers

William H. Atwell	D. A. Hulcy
Terry, T. G. (North of Camp Wisdom)	Alexander, Birdie Lee, Umphrey Terry, T. G. (South of Camp Wisdom)
Turner, Adelle	Weiss, Martin
Twain, Mark (South of Loop 12)	
	L. V. Stockard
T. W. Browne	Arcadia Park
Carpenter, John	Cowart, L. P.
Cochran, Nancy	Donald, L. O.
Davis, Jeff	Hall, L. K.
Stemmons, L. L.	Jones, Anson
Twain, Mark (North of Loop 12)	Peabody, George Lanier Douglass
Webster, Daniel	Juarez
W. E. Greiner	
Henderson, M. B.	
Hogg, James	
Hooe, Lida	
Peeler, J. F.	
Reagan, John	
Rosemont	
Stevens Park	
Winnetka	

SOUTHWEST
Senior High Schools
9-12

School	Anglo	Black	M-A	Minority	Total	111a	
						Bldg. Cap.	
David W. Carter	No. 705	% 38.3	No. 87	% 4.7	1843	2000	
Justin F. Kimball	1653	74.6	258	11.6	2217	2100	
Sunset	1216	60.8	661	39.2	2001	1800	
Adamson	440	32.6	471	67.4	1349	1300	

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SOUTHWEST

Feeder Schools for Senior High Schools 9-12

David W. Carter

Sunset

Alexander, Birdie

Arcadia Park

Lee, Umphrey

Cowart, L. P.

Terry, T. G.

Hooe, Lida

Turner, Adelle

Jones, Anson

Twain, Mark

Peabody, George

(South of

Rosemont

Loop 12)

Stevens Park

Weiss, Martin

Winnetka

Justin F. Kimball

Adamson

Carpenter, John

Bowie

Davis, Jeff

Henderson

Donald, L. O.

Hogg

Cochran, Nancy

Peeler

Hall, L. K.

Reagan

Stemmons, L. L.

Budd

Twain, Mark

Lanier

(North of

Juarez

Loop 12)

Douglass

Webster, Daniel

EAST OAK CLIFF SUB-DISTRICT

EAST OAK CLIFF

K-3

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School	Anglo		Black		M-A		Minority %	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
B. F. Darrell	3	.5	619	97.5	13	2.0	99.5	635	750
T. D. Marshall	2	.3	649	98.6	7	1.1	99.7	658	750
E. M. Pease	0	0	723	100.0	0	0	100.0	723	800
Erasmus Seguin	11	1.4	737	91.5	57	7.1	98.6	805	750

EAST OAK CLIFF K-3; 4-5-6

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School	K-3*	Anglo No. %	Black No. %	M-A No. %	Minority %	Total	Bldg. Cap.
James Bowie	357	65 29.7	56 25.6	98 44.7	70.4	576	800
Harrell Budd	403	8 1.5	497 89.2	52 3.3	98.5	960	800
John N. Bryan	698	0 0	620 99.5	3 .5	100.0	1231	1400
W. W. Bushman	689	5 .8	580 97.5	10 1.7	99.2	1284	1350
J. N. Ervin	378	1 .3	302 99.7	0 0	99.7	681	1000
N. W. Harlee	310	2 .8	249 98.4	4 .8	99.2	563	800
Maynard Jackson** 4-6	0	0 0	634 99.8	1 .2	100.0	635	1000
A. S. Johnston	588	0 0	422 94.8	23 5.2	100.0	1033	1350
Lisbon	390	1 .3	364 97.9	7 1.8	99.7	762	500
T. L. Marsalis	242	0 0	278 99.6	1 .4	100.0	521	800
Wm. B. Miller	662	0 0	490 100.0	0 0	100.0	1152	800
Roger Q. Mills	770	0 0	406 98.8	5 1.2	100.0	1181	1350
Clara Oliver 4-6	0	0 0	665 99.3	5 .7	100.0	670	800
C. P. Russell 4-6	0	13 2.0	601 91.6	42 6.4	98.0	656	800
R. L. Thornton	423	2 .4	448 99.6	0 0	99.6	873	800
Whitney Young 4-6	0	1 .2	613 98.2	10 1.6	99.8	624	800

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* K-3 students are not included in the ethnic ratios for grades 4-5-6.

** Maynard Jackson School will be a 4-6 Vanguard School and 300 student stations will be reserved for integration purposes. Programming will be from 7:00 a.m. to 7:00 p.m.

East Oak Cliff Middle Schools 7-8

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
O. W. Holmes	1	.1	1926	98.7	23	1.2	99.9	1950	2500
Harry Stone	0	0	650	100.0	0	0	100.0	650	800
Boude Storey	18	.9	2041	97.2	40	1.9	99.1	2099	2000
J. N. Ervin	2	1.0	198	99.0	0	0	99.0	200	1000

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EAST OAK CLIFF

Feeder Schools for 7-8 Grade Centers

O. W. Holmes

Bryan, J. N. (East of Lancaster)

Bushman, W. W.

Harllee, N. W.

Johnston, A. S.

Mills, R. Q.

Miller, W. B.

Harry Stone

Pease, E. M./Jackson, M.

Darrell, B. F./Young, W.

Boude Storey

Bowie, James

Bryan, J. N. (West of Lancaster)

Budd, Harrell

Lisbon

Marsalis, T. L.

Oliver, Clara/Marshall, T. D.

Russell, C. P./Seguin

Thornton, R. L.

*Ervin, J. N.*East Oak Cliff
Senior High Schools
9-12

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Roosevelt, F. D.	7	.3	2590	99.1	17	.6	99.7	2615	2200
South Oak Cliff	0	0	4162	100.0	0	0	100.0	2762*	2600

* The former Zumwalt School will house 1,400 ninth grade students from South Oak Cliff High School.

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EAST OAK CLIFF

Feeder Schools for Senior High Schools 9-12

F. D. Roosevelt

Bryan, J. N. (East of Lancaster)
 Bushman, W. W. (North of Fordham)
 Johnston, A. S.
 Miller, W. B.
 Mills
 Harllee

South Oak Cliff

Bryan, J. N. (West of Lancaster)
 Ervin, J. N.
 Marsalis, T. L.
 Lisbon
 Oliver, Clara/Marshall, T. D.
 Thornton, R. L.
 Russell, C. P./Seguin, E.
 Bushman, W. W. (South of Fordham)
 Pease, E. M./Jackson M.
 Darrell/Young

SEAGOVILLE SUB-DISTRICT

SEAGOVILLE

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
Kleberg K-6	236	69.6	83	24.4	20	6.0	30.4	339	300
Central 5-6	240	86.3	22	7.9	16	5.8	13.7	278	300
Seagoville K-4	549	82.8	85	12.8	29	4.4	17.2	663	600
Seagoville 7-12	817	81.1	148	14.7	43	4.3	19.0	1008	750

TRANSPORTATION

TRANSPORTATION*

Grades 4-8

	Anglo	Percent	Black	Percent	M/A	Percent	Total
Northwest	2,835	35.4	3,574	44.6	1,601	20.0	8,010
Northeast	1,412	29.0	3,263	67.0	199	4.0	4,874
Southeast	2,129	47.9	2,081	46.8	234	5.3	4,444
Total	6,376	36.8	8,918	51.5	2,034	11.7	17,328
Grades 4-8							
4-8	23,019	40.2	26,442	46.2	7,754	13.6	57,215

Districtwide Enrollment and Ratios — Grades 4-8

* These figures do not include students being voluntarily transported to 4-6 grade Vanguard Schools, 7-8 grade Academies and 9-12 grade Magnet Schools.

It is contemplated that the magnet schools and the various transfer options available will prevent any over crowding of buildings which seems to exist in the figures quoted on the previous pages.

SUPPLEMENTAL ORDER

(Number and Title Omitted)

Filed: Apr. 15, 1976

The Court, finding it necessary to correct clerical errors in the student assignments made in the Final Order entered in this case, hereby Orders that the corrections in the attached Appendix be incorporated in and made a part of the Final Order of April 7, 1976.

It is so ORDERED, this, the 15th day of April, 1976.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

APPENDIX

Page 53a - The Northwest Sub-District boundary should read as follows: The boundary is the Dallas-Fort Worth Toll Road commencing at the western boundary of the DISD and extending east to Hampton Road; Hampton Road north to Singleton; Singleton east to Vilbig; Vilbig north to Morris; Morris east to Sylvan; Sylvan north to the Trinity River; the Trinity River south to the Texas & Pacific Railroad; east on the Texas & Pacific Railroad and Pacific Street to Live Oak; northeast on Live Oak to Haskell;

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southeast on Haskell to Swiss; northeast on Swiss to Beacon; northwest on Beacon to Lindell; west on Lindell to Hubert; north on Hubert to Lewis; west on Lewis to Greenville; north on Greenville to Miller; west on Miller to McMillan; north on McMillan to the alley between Morningside and McCommas; west on the alley between Morningside and McCommas to Central Expressway; north on Central Expressway to Lovers Lane; east on Lovers Lane to Skillman; south on Skillman to the Missouri-Kansas-Texas Railroad; east on the Missouri-Kansas-Texas Railroad to Abrams Road; south on Abrams Road to Mockingbird Lane; northeast on Mockingbird Lane to Whiterock Creek.

Page 78a - The seventh line from the top of the page should read, "... schools or such programs as special, vocational and bilingual ..."

Page 83a - After the sentence "Tri-Ethnic Committee members shall be appointed by the Court for staggered two-year terms beginning July 1, 1976," the following sentence should be inserted: "The Court requests that the Plaintiffs, DISD, NAACP and other Intervenor, and Amicus Curiae make recommendations (if they so desire) to the Court as to persons willing and able to serve as members of the Tri-Ethnic Committee, when vacancies occur."

Page 92a - Appendix A -

Delete Reilly as a K-3 Center.

Page 93a - Appendix A - Enrollment data should be changed as shown below:

School	K-3	Anglo		Black		M/A		Minority	Total	Building Capacity
		No.	%	No.	%	No.	%			
Conner	250	175	54.0	136	42.0	13	4.8	46.0	574	800
Truett	352	303	53.5	240	42.3	24	4.2	46.5	919	1300
Reilly	311	492	55.8	369	41.8	21	2.4	44.2	1193	1250

Page 94a - Appendix A — The feeder schools for Conner and Truett should be changed as shown below and Reilly added as a 4, 5, 6 grade center with feeder schools as shown below:

Conner	Reilly
Conner Brown*	Reilly Hexter Rice
Truett	
Truett Brown*	

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* Assigned to more than one school.

Page 109a - Appendix A — Enrollment data should be changed as shown below:

School	Anglo		Black		M/A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%	%		
Griener	640	54.7	112	9.6	418	35.7	45.3	1170	1300

Page 110a - Appendix A —

James Bowie School should be added to the list of feeder schools for W. E. Griener Middle School.

Page 115a - Appendix A — Enrollment data should be changed as shown below:

School	Anglo		Black		M/A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%	%		
Storey	2	.1	2006	98.7	24	1.2	99.9	2032	2000

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Page 116a - Appendix A —

Delete James Bowie School from the list of feeder schools for Boude Storey Middle School.

SUPPLEMENTAL ORDER

(Number and Title Omitted)

Filed: Apr. 20, 1976

The Motion of Plaintiffs to Alter or Amend the judgment entered on April 7, 1976, having come on before the Court, and the Court being of the opinion that it is well taken and should be sustained, it is therefore ORDERED that the April 7, 1976, judgment, Section VI, subsection 2 on page 67a, be and hereby is amended to read as follows:

"2. English-as-a-Second Language (ESL) programming shall be expanded as rapidly as possible to serve all students who are unable to effectively participate in traditional school programming due to inability to speak and understand the English language. Emphasis shall be given to expanding ESL programming in grades 7-8 and 9-12."

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

4/20/76
Date

SUPPLEMENTAL ORDER CHANGING ATTENDANCE ZONES OF JAMES MADISON HIGH SCHOOL AND LINCOLN HIGH SCHOOL

(Number and Title Omitted)

The Court's desegregation expert, Dr. Josiah C. Hall, has called the Court's attention to a possible error in the attendance zones established for James Madison High School and Lincoln High School under the Court's April 7, 1976, Final Order resulting in the following situation:

- (a) Students in grades 9, 10, 11 and 12 residing in the Charles Rice Elementary School attendance zone have been assigned under the April 7, 1976, Final Order to James Madison High School but actually reside closer to Lincoln High School than James Madison High School and will be going past Lincoln High School in order to reach James Madison High School, and
- (b) Students in grades 9, 10, 11 and 12 residing in the Paul L. Dunbar Elementary School attendance zone have been assigned under the April 7, 1976, Final Order to Lincoln High School but actually reside closer to James Madison High School than Lincoln High School and will be going past James Madison High School in order to reach Lincoln High School.

The Court's desegregation expert, Dr. Josiah C. Hall, has recommended to the Court that the Court correct this situation and that:

- (a) Students in grades 9, 10, 11 and 12 residing in the Charles Rice Elementary School attendance zone should be assigned to Lincoln High School, and
- (b) Students in grades 9, 10, 11 and 12 residing in the Paul L. Dunbar Elementary School attendance zone should be assigned to James Madison High School.

The Court's desegregation expert, Dr. Josiah C. Hall, has advised the Court that these recommended changes will not change the ethnic composition of either Lincoln High School or James Madison High School as exist under the Court's April 7, 1976, Final Order and such changes will create no problems as to building capacity at either James Madison or Lincoln High Schools and that such changes will create no administrative problems for the Dallas Independent School District.

The Court having considered such observations and recommendations made by Dr. Hall is of the opinion and so finds that same are correct and well taken and that Dr. Hall's recommended changes in the attendance zones for James Madison High School and Lincoln High School should be made. The Court is also of the opinion and so finds that such recommended changes are not contrary to the intent and spirit of the entire student assignment plan for all grade levels contained in the Court's April 7, 1976, Final Order, and particularly as same pertains to that of high school student assignments contemplated for grades 9-12.

THEREFORE, IT IS ORDERED that the Court's Final Order of April 7, 1976, including Appendix A thereto,* be, and the same is hereby, changed, altered and amended as follows:

- (a) Students in grades 9, 10, 11 and 12 residing in the Charles Rice Elementary School attendance zone are assigned to Lincoln High School, and
- (b) Students in grades 9, 10, 11 and 12 residing in the Paul L. Dunbar Elementary School attendance zone are assigned to James Madison High School.

DATED August 18th, 1976.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

* For point of reference, the feeder elementary schools for James Madison High School appear at p. 98a of Appendix A and the feeder elementary schools for Lincoln High School appear at p. 105a of Appendix A.

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APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-1849

EDDIE MITCHELL TASBY and
PHILLIP WAYNE TASBY, by their parent and next
friend, SAM TASBY, ET AL.,
Plaintiffs-Appellants
Cross Appellees,

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P.,
Plaintiffs-Intervenors
Appellants-Cross Appellees,

versus

DR. NOLAN ESTES, ET AL.,
Defendants-Appellees
Cross Appellants.

No. 77-1752

EDDIE MITCHELL TASBY and PHILLIP WAYNE
TASBY, by their parent and next friend, SAM TASBY,
ET AL.,
Plaintiffs,

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METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., ET AL.,
Plaintiffs-Intervenors,
Appellants,

versus

DR. NOLAN ESTES, ET AL.,
Defendants-Appellees.

No. 77-2335

CONCERNED CITIZENS OF GLENVIEW,
Plaintiff-Appellant,

versus

DR. NOLAN ESTES, General Superintendent, ET AL.,
Defendants-Appellees.

Appeals from the United States District Court for the
Northern District of Texas

(April 21, 1978)

Before COLEMAN, TJOFLAT, and FAY, Circuit
Judges.

TJOFLAT, Circuit Judge:

The Dallas Independent School District (DISD), the
eighth largest urban school district in the country, has

been the subject of desegregation litigation for over twenty years.¹ In 1975, a panel of this court remanded the case to the district court with instructions that a plan be implemented that would effectively desegregate the school system. *Tasby v. Estes*, 517 F.2d 92 (5th Cir.), *cert. denied*, 423 U.S. 939, 96 S.Ct. 299 (1975). On remand, a new school desegregation plan was adopted by the district court. *Tasby v. Estes*, 412 F. Supp. 1192 (N.D. Tex. 1976). In these consolidated appeals, the NAACP, intervenors in the desegregation case², primarily challenge the student assignment portion of the district court's order; this will be referred to as the main appeal. The NAACP claims that the student assignment plan cannot pass constitutional muster because of the large number of one-race schools it establishes. The plan divides the DISD into six subdistricts, one of which is nearly all black and contains only one-race schools.³ In the other five sub-

1 The first action to desegregate the Dallas schools was filed in 1955. For a discussion of the Fifth Circuit precedents relating to the desegregation of the DISD, see *Tasby v. Estes*, 517 F.2d 92, 95 (5th Cir.), *cert. denied*, 423 U.S. 939 (1975).

2 In 1975, following remand, the NAACP moved to intervene in the DISD desegregation case, *Tasby v. Estes*, stating that it represented the interests of its members, and its members' children, in the protection of constitutional rights. Record, vol. 1, at 48-51, No. 76-1849. At the hearing held by the district court on the NAACP's motion, counsel for the NAACP moved to amend the motion to intervene by adding the names of three school children. 13th Supp. Record, vol. 7, at 13, No. 76-1849. The DISD continues to contend, as it did below, that the NAACP lacks standing to be a party in this case. We find the DISD's contention to be groundless. We consider the criteria for intervention in a school desegregation case, as established by *Hines v. Rapides Parish School Bd.*, 479 F.2d 762 (5th Cir. 1973), to have been met and affirm the district court's order granting intervention.

3 This subdistrict has approximately 27,500 students attending sixteen schools. For the purpose of this opinion, we define as one-race a school that has a student body with approximately 90% or more of the students being either Anglo or combined minority races. We reiterate the admonition of the prior panel, however, that the 90% figure is not a "magic level below which a school [will] no longer be categorized as 'one-race.'" 517 F.2d at 104.

districts, containing some 160 schools, approximately fifty are still essentially one-race schools. Two other matters concerning the DISD are also before this court: the exclusion of the Highland Park Independent School District from the district court's desegregation plan⁴ and the acquisition and sale of certain school sites by the DISD.⁵

I. The Main Appeal

A detailed description of the proceedings in this complex litigation prior to 1975 can be found in the opinion of the previous panel, which is reported at 517 F.2d 92 (5th Cir.), *cert. denied*, 96 S.Ct. 299 (1975). That panel disapproved the district court's 1971 plan which sought to eliminate the vestiges of a dual school system in the DISD and remanded the case for the formulation of a more effective student assignment plan.

Since 1971, substantial changes have occurred in the DISD. The residential patterns of Dallas have shifted; many areas are now naturally integrated. What was

4 This issue arose from the district court's order in *Tasby v. Estes*, reported at 412 F. Supp. 1185 (N.D. Tex. 1976), and is part of appeal No. 76-1849.

5 Following the implementation of the district court's desegregation plan now under review, the district court authorized the DISD to acquire a shopping center for conversion into classrooms and administrative facilities and to sell a ten-acre parcel of unimproved land. 22d Supp. Record, vol. 1, at 1, No. 76-1849. The propriety of this action is raised in appeal No. 77-1752, brought by the NAACP. In appeal No. 77-2335, the Concerned Citizens of Glenview, a corporation of parents of children who will be assigned to the converted shopping center, appeals the dismissal by the district court of a separate action that it brought to halt the conversion of the shopping center.

formerly a majority Anglo system has become a predominantly minority one, although the population of the city of Dallas remains majority Anglo.⁶ As the district court recognized in fashioning the plan now before us, there may be special considerations involved in devising a school desegregation plan in an urban area with a predominantly minority enrollment that may justify the maintenance of some one-race schools. 412 F. Supp. at 1195-1199. See *Calhoun v. Cook*, 522 F.2d 717 (5th Cir.), rehearing denied, 525 F.2d 1203 (5th Cir. 1975) (discussing similar developments in Atlanta, Georgia).

In devising its plan, the district court considered numerous proposals to desegregate the school system. Plans were submitted by the original plaintiffs; the NAACP; the DISD; Dr. Joseph A. Hall, a court-appointed expert; and the Education Task Force of the Dallas Alliance, a triethnic group and amicus curiae in this suit.⁷ After developing a voluminous record and holding hearings for over a month on the feasibility and effectiveness of these proposals, the district judge drew a comprehensive plan dealing, *inter alia*, with special programs, transportation, discipline, facilities, personnel, and an accountability system, as well as student assignments. 412 F. Supp. at 1195, 1212-21. We find it necessary to remand again the student assignment portion of the plan for further consideration. On remand, the district court should recon-

⁶ In 1971, the DISD was 69% Anglo; in 1975, it was 41.1% Anglo, 44.5% black, 13.4% Mexican-American, and 1% "other" races.

⁷ Plans were also submitted by a group of students at Skyline High School, the Alliance for Integrated Education, and "a number of groups and concerned parents." 412 F. Supp. at 1194 n. 4.

sider the other provisions of its plan in the light of the relief it ultimately orders.⁸

The order under review calls for the creation of six subdistricts, generally reflecting the geographical sections of the DISD, for student assignment purposes. Four of these subdistricts, Southwest, Northwest, Northeast, and Southeast, have approximately the racial makeup, plus or minus five percent, of the DISD as a whole. The other two subdistricts each contain a predominant ethnic group. Seagoville, geographically isolated from the rest of the DISD, has an approximately eighty-two percent Anglo enrollment and is the only predominantly Anglo subdistrict. East Oak Cliff, bounded by the Trinity River bottom on one side and by Interstate 35 on the other, is approximately ninety-eight percent black.

The district court order provides for uniform grade configurations throughout the DISD: kindergarten through third grades (K-3) Early Childhood Education Centers, fourth through sixth grades (4-6) Intermediate Schools, seventh and eighth grades (7-8) Middle Schools, and ninth through twelfth grades (9-12)

⁸ The DISD has taken a rather unique position in this appeal. It supports the present plan in toto, but seeks to have the administrative portions of the plan vacated if the student assignment portion is not upheld. The Curry intervenors, who have represented a group of residents in a northern section of the DISD since 1971, claim that the district court erred in ordering a strict 44% Anglo, 44% black, 12% Mexican-American ratio for all future DISD top administrative posts. Because we wish to grant the district court enough latitude on remand to devise a plan that will be workable, we are not binding it to the present non-student-assignment portions of its order.

High Schools.⁹ Wherever possible, present student assignments are retained in "naturally integrated" areas. Students in the K-3 Early Childhood Education Centers remain in their neighborhood schools.¹⁰ In the areas that are not naturally integrated, students in grades 4-8, the Intermediate and Middle Schools, are assigned to centrally located schools. High school students are assigned to their traditional neighborhood schools.

Various programs to increase the desegregation of the DISD's schools are to be implemented. Majority-to-minority transfers are permitted at all grade levels.¹¹ Present magnet high schools and magnet

⁹ Although the order specifies these grade configurations, the DISD's facilities combine K-6 in most elementary schools.

¹⁰ Two exceptions were made by the district court in order to convert elementary school facilities to magnet school use. Emphasis is placed on improving the quality of early education in these Early Childhood Education Centers.

¹¹ Under this provision, any student assigned to a grade configuration in a particular school

in which the percentage of members of his race is greater than the District-wide percentage of members of his race for [that grade configuration] shall be permitted to transfer to any . . . school in the School District containing his grade level in which the percentage of members of his race is less than the District-wide percentage of his race for [that grade configuration].

412 F. Supp. at 1217. Mexican-Americans, however, are permitted the option of minority-to-majority transfers if they comprise less than five percent of the school to which they are originally assigned. This provision was made to afford them the opportunity to transfer to a school that offers the DISD's Bilingual Education Program. 412 F. Supp. at 1218.

comprehensive high schools¹² are to be maintained and new ones are to be established. The goal is the institution of magnet 9-12 schools throughout the DISD. 412 F. Supp. at 1205.

The DISD acknowledges that the creation of the all black East Oak Cliff subdistrict and the existence of a substantial number of one-race schools militate against the finding of a unitary school system. It contends, however, that this is the only feasible plan in light of natural boundaries and "white flight." The district court was instructed in the opinion of the prior panel to consider the techniques for desegregation approved by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267 (1971). We cannot properly review any student assignment plan that leaves many schools in a system one race without specific findings by the district court as to the feasibility of these techniques. *Davis v. East Baton Rouge Parish School Board*, No. 75-3610 (5th Cir. April 7, 1978). There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing. *See Mims v.*

¹² The magnet concept is designed to attract students to a school because of the special career, vocational, or other programs it offers. Magnet schools proposed by the DISD will provide intensive training in a number of fields, including mathematics/science, child-related careers, creative arts, business and management, and health professions. The number of black, Mexican-American, and Anglo students in each magnet comprehensive high school was ordered to be in proportion, plus or minus 10%, to the percentage of each group in the 9-12 student population in the DISD. 412 F. Supp. at 1215-16.

Duval County School Board, 329 F. Supp. 123, 133-34 (M.D. Fla. 1971).

Of particular concern are the high schools that are one race. Although students in the 4-8 grade configurations are transported within each subdistrict to centrally located schools to effect desegregation, the district court's order leaves high school students in the neighborhood schools. Within three of the four integrated subdistricts¹³, this results in high schools that are still one-race schools.¹⁴ The district court is again directed to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools and to reevaluate the effectiveness of the magnet school concept.¹⁵ If the district court determines that the utilization of pairing, clustering, or the other desegregation tools is not practicable in the DISD, then the district court must make specific findings to that effect.

The district court's current desegregation plan requires the DISD to provide transportation for students who are reassigned to a new attendance zone or who choose to attend a magnet school. 412 F. Supp. at 1218. A similar provision was not made for those students who choose the majority-to-minority transfer option.

¹³ This excludes East Oak Cliff, the black subdistrict, and Seagoville, the one predominantly Anglo subdistrict.

¹⁴ In the Northwest subdistrict, one high school is 95% minority and two high schools are 96% Anglo. In the Northeast subdistrict, one high school is 99.8% minority and one is 95% Anglo. In the Southeast subdistrict, one school is 100% minority and one is 89% Anglo.

¹⁵ The NAACP's brief cites a statement to the press by Dr. Nolan Estes, superintendent of the DISD, that the magnet school concept has not been effective in desegregating the school system in Dallas. Brief for Intervenor-Appellants, No. 77-1752, at 7.

This omission was error by the district court. The school board, not the students or their parents, must assume the burden of transporting the students. *Swann*, 402 U.S. at 26-27, 91 S. Ct. at 1281. On remand, the district court is directed to include the majority-to-minority transfer option in the transportation provision of the plan finally adopted.

II. The Highland Park Independent School District

After the prior panel remanded this case to the district court, the plaintiffs joined seven independent suburban school districts in the Dallas area as defendants.¹⁶ The plaintiffs alleged that these school districts retained vestiges of dual school systems and that they joined with the DISD in utilizing a student transfer procedure that aided the DISD in maintaining segregated schools. On the basis of this allegedly unlawful procedure, the plaintiffs sought to have the suburban school districts included in the DISD desegregation plan.

The plaintiffs moved for the voluntary dismissal of all but one of the suburban school districts, and the district court dismissed them without prejudice. The remaining school district, Highland Park Independent School District, was dismissed with prejudice by the district court after an evidentiary hearing. *Tasby v. Estes*, 412 F. Supp. 1185 (N.D. Tex. 1975).

The Highland Park Independent School District was created in 1914. It generally serves as the school dis-

¹⁶ These school districts were Carrollton-Farmers Branch, DeSoto, Duncanville, Highland Park, Irving, Lancaster, and Wilmer-Hutchins Independent School Districts.

trict for the cities of Highland Park and University Park, although its boundaries are not coterminous with those of the cities. At the time of its inception, the Highland Park school system was outside the city limits of Dallas; now, the city of Dallas completely surrounds Highland Park and University Park. The school system is comprised of six schools,¹⁷ and the current enrollment has stabilized at approximately 4,600 students, all of whom are Anglo. The DISD has approximately thirty times more students than the Highland Park system.

Prior to 1958¹⁸, the Highland Park System conformed with Texas law and segregated school children by race. In order to accomplish this, the few black school children residing within the school district were transported to the DISD, with their tuition being paid by the Highland Park school system.¹⁹ Some Anglo students were allowed to transfer into the Highland Park system until 1971, primarily because either they resided in the cities of Highland Park or University Park or they had moved out of the school district and were being allowed to continue their education in the system. 412 F. Supp. at 1190-91.

¹⁷ There are four elementary schools, one middle school, and one high school in the Highland Park school system.

¹⁸ Even after the Supreme Court's decision in *Brown v. Bd. of Education*, 349 U.S. 294 (1955), Texas laws required segregation. The penalties for violating the statutes included loss of funding and accreditation. 412 F. Supp. at 1189.

¹⁹ The figures show that the greatest number of black students for whom tuition was paid by the Highland Park school system during any academic year was eleven. 412 F. Supp. at 1190.

The district court found that the Highland Park Independent School District has not maintained a policy of school segregation since 1958. This finding is supported by the record and, as it is not clearly erroneous, is accepted by this court. Fed. R. Civ. P. 52(a). Given this twenty year history of nondiscrimination and the negligible effect that the system's prior policy of segregation had on the DISD or its own system, we find that the district court did not err in refusing to include the Highland Park Independent School District in the student assignment plan for the DISD. See *Dayton Board of Education v. Brinkman*, 97 S.Ct. 2766, 2775-76 (1977); *Milliken v. Bradley*, 418 U.S. 717 (1974).

III. The Acquisition and Sale of School Sites.

On October 11, 1976, following the implementation of the district court's plan to desegregate DISD, the Board of Education of the DISD²⁰ unanimously resolved that an election be called to authorize the Board to issue \$80,000,000 in bonds for school site acquisitions, construction, and equipment. The bond issue passed overwhelmingly in all subdistricts on December 11, 1976.

The prior panel had directed the district court

to evaluate all of the site acquisition, school construction and facility abandonment plans put forward by the DISD in light of the impact which these undertakings will have upon the disestablishment of the dual school system.

²⁰ This body was composed of six Anglos, two blacks, and one Mexican-American.

Only those projects which will foster the desegregation process should be approved by the district court and such approval should be given only after full hearing and after the making of findings of fact and conclusions of law regarding each such project.

517 F.2d at 110. The DISD submitted forty-two plans, including thirty-two site acquisitions and constructions and ten abandonments, to the district court on February 17, 1977, and a hearing was held on February 24. On March 2, the district court approved each of the plans. In appeal No. 77-1752 the NAACP questions the district court's approval of two of these plans: the acquisition of the A. Harris Shopping Center for conversion into a school²¹ and the sale of one parcel of unimproved land. The shopping center and the land in question are both located in the East Oak Cliff subdistrict.

The A. Harris Shopping Center site occupies twenty-eight acres of land, divided into two tracts by a street. There are 305,000 square feet of existing building space on the eighteen acre tract. The site was purchased by the DISD for approximately \$1,800,000, an amount far below what it would cost the DISD to purchase twenty-eight acres and build comparable floor space.²² The DISD proposed an initial outlay of \$500,000 for renovation of the existing structures, with an additional \$1,000,000 to be spent over the next five years. 2d Supp. Record, vol. 1, at 29, 167, No. 77-1752.

21 The NAACP filed a motion to stay the conversion of the shopping center, which the district court denied on April 5, 1977. The NAACP then filed a motion to stay with this court, which was carried with the case. In accordance with our determination of the merits of this issue, that motion is denied.

22 Testimony in the record indicates that it would cost more than \$30.00 a square foot to construct this amount of building space. 2d Supp. Record, vol. 1, at 28-29, No. 77-1752.

The DISD's plans for the shopping center complex include a K-12 school²³, facilities to provide a number of education services²⁴, and facilities to provide social services²⁵. There will also be traditional grade levels K-3, 4-6, 7-8, and 9-12. These different educational operations will be conducted as distinct facilities with separate administrations, teaching staffs, and physical education programs. The DISD anticipates that it will ultimately assign approximately 2,400 students to the traditional K-12 school units.

The crux of the NAACP's argument about the shopping center site is that its location in East Oak Cliff, with an attendance zone that encompasses only East Oak Cliff schools, perpetuates school segregation in Dallas. Virtually all of the students to be assigned to the new school will be black. The NAACP also raises questions concerning the combination of programs to be implemented in the shopping center site. One of the programs is to be a "metropolitan" school, an alternative school for "troubled" students, i.e., those students who experience difficulty in the more traditional school setting. Also raised as grounds for not

23 This K-12 school is to be developed as a career education program under a \$600,000 grant. The district court ordered the DISD to implement this program "as rapidly as possible." 412 F. Supp. at 1216.

24 These educational services are to include a pre-school, a continuing education program (evening), a personnel development center, a gifted and talented program, a fine arts center, a recreational center (day and evening), an extended day program, alternative schools for troubled students, a vocational/industrial arts program, pupil personnel services or special education, and instructional services.

25 These social services are to include a senior citizens program, a health services agency, family services, a parent education program, and employment agencies.

converting the shopping center to educational use are the traffic problem because of its location near two freeways and the inferiority of the facilities.²⁶

We defer to the DISD's expertise in establishing suitable programs for the school children of Dallas. The long-range plans for the shopping center site include many valuable facets for the education of the community. The DISD has stated that the programs will be separated, the existing structures will be renovated, and unoccupied space will be converted to traditional recreational and playground space suitable for the various grade-level school units. We are remanding this case to the district court for further consideration of its student assignment plan; on remand, the district court is directed to consider assigning Anglo students to the new complex. As the DISD notes, the shopping center site is easily accessible to the entire city. 2d Supp. Record, vol. 1, at 30, No. 77-1752. Time-and-distance studies should emphasize the feasibility of transporting Anglo students to attend school there.

The unimproved land in question is located on the southern edge of East Oak Cliff, some twenty-five miles from the northern edge of the DISD. It is therefore isolated from the remaining Anglo students who do not reside in naturally integrated areas. The record also reflects that the site has poor access potential. Given these facts in the record, we find no error in the district court's approval of the sale of this land.

²⁶ No playgrounds were available and the existing structure was allegedly dilapidated and structurally deficient.

The Concerned Citizens of Glenview, a corporation of parents of school children who will be assigned to the shopping center complex under the present student assignment plan, brought a separate action to enjoin construction and renovation of the A. Harris Shopping Center. On May 18, 1977, the district court held a hearing on the Concerned Citizens' request for injunctive relief. At that hearing, the district judge ruled that this case should be dismissed on the basis of the doctrine of virtual representation, i.e., Concerned Citizens was in effect represented by the NAACP when the issue was presented in the *Tasby* case. The Concerned Citizens claims on appeal that the focus of its suit, that the shopping center facility will be inferior thereby denying the students equal protection of the laws, is different from that of the NAACP, that the use of the shopping center will perpetuate a dual school system.

We have considered the adequacy of the proposed shopping center facility in connection with the NAACP's appeal. Our disposition in that case renders moot the appeal of the Concerned Citizens of Glenview.

IV. Conclusion

In No. 76-1849, we REMAND the case to the district court for the formulation of a new student assignment plan and for findings to justify the maintenance of any one-race schools that may be a part of that plan. The district court is directed to include in its plan a majority-to-minority transfer option with adequate transportation. As for the remaining provisions of its

order here under review, the district court is to reassess such provisions in light of the remedy it fashions with respect to school assignments. The district court's exclusion of the Highland Park Independent School District from its desegregation plan for the DISD is AFFIRMED.

In No. 77-1752, the district court's approval of the sale of the ten-acre parcel of land in East Oak Cliff and the acquisition of the A. Harris Shopping Center is AFFIRMED, with the proviso that the district court consider the feasibility of desegregating the new complex. The appeal in No. 77-2335 is DISMISSED as moot.

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK

May 22, 1978

TO ALL PARTIES LISTED BELOW:

NO. 76-1849 — EDDIE MITCHELL TASBY, ET AL. v.
METROPOLITAN BRANCHES OF
THE DALLAS NAACP v. DR. NOLAN
ESTES, ET AL.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition(s) for rehearing, on behalf of appellees, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH,
Clerk

/s/ BRENDA M. HAUCK
Deputy Clerk

bmh

cc: Mr. Edward B. Cloutman
Ms. Sylvia M. Demarest
Mr. E. Brice Cunningham
Mr. Warren Whitham
Mr. Mark Martin
Mr. James W. Deatherage
Mr. Richard E. Gray
Messrs. Robert H. Mow
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APPENDIX "E"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-1849

EDDIE MITCHELL TASBY, ET AL.,
Plaintiffs-Appellants
Cross Appellees,

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P.,
Plaintiffs-Intervenors
Appellants-Cross Appellees,

versus

DR. NOLAN ESTES, ET AL.,
Defendants-Appellees
Cross Appellants.

Appeal from the United States District Court for the
Northern District of Texas

MOTION FOR STAY OF MANDATE
(The Dallas Independent School District)

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The Defendants-Appellees and Cross Appellants, the Board of Trustees of the Dallas Independent School District and its General Superintendent, move the Court to stay the mandate in this action and not permit the same to be issued out of said cause until the further order of the Court on the ground and for the reason that they expect and intend, in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America by petition for a review on Writ of Certiorari of the decision and judgment of this Court of April 21, 1978, in No. 76-1849 insofar as this Court has remanded the case to the District Court for the formulation of a new student assignment plan for the Dallas Independent School District and for findings to justify the maintenance of any one-race schools that may be a part of that plan.

WHEREFORE, the Defendants-Appellees and Cross Appellants, the Board of Trustees of the Dallas Independent School District and its General Superintendent, pray that this Court make and enter an appropriate order staying the issuance of the mandate in this action insofar as this Court has remanded the case to the District Court for the formulation of a new student assignment plan for the Dallas Independent School District and for findings to justify the maintenance of any one-race schools that may be a part of that plan until the further order of the Court.

Respectfully submitted,
/s/ WARREN WHITHAM
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Stay of Mandate has been mailed this 24th day of May, 1978, by the undersigned attorneys for Defendants-Appellees and Cross Appellants (Dallas Independent School District) to the following attorneys of record:

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Warren Whitham

Mark Martin

Attorneys for Defendants-
Appellees and Cross Appellants

APPENDIX "F"

**SUMMARY EXAMPLES OF NON-STUDENT
ASSIGNMENT REQUIREMENTS INCLUDED IN
THE DISTRICT COURT'S APRIL 7, 1976, FINAL
ORDER**

1. The requirement to provide a comprehensive program of instruction in all areas based on the developmental needs of young children and the DISD's Baseline Curriculum Program.

2. The requirement that this K-3 approach shall be primarily diagnostic-prescriptive.

3. The requirement that the approach in the Baseline Curriculum implementation for K-3 include:

(a) Individualization of instruction.

(b) Principal and staff planning for implementing the program in each school in conjunction with parent advisory committees at each school.

(c) Reduction of the adult-pupil ratio from that which exists with an adult-student ratio of 1-10 as a goal to be achieved as rapidly as possible.

(d) Continuation of a staff development program to implement the DISD Baseline Curriculum to meet early childhood education

needs and further individualization of instruction with involvement of parents in participating roles.

(e) Partnerships with community groups, business and other agencies which serve young children.

(f) Efforts to maximize parental involvement in planning, reinforcing and complementing their children's learning.

(g) Use of the Early Childhood Education Centers as Administrative units which have a primary responsibility for delivering quality learning experiences.

4. The requirement to establish in 1976-77 at least two exemplary development and demonstration classes for children in the East Oak Cliff Subdistrict.

5. The requirement to continue to develop prototypic enrichment programs for K-3 students.

6. The requirement that the instructional program in 4-6 and 7-8 centers follow the DISD's Baseline Curriculum.

7. The requirement that each principal and his staff in the 4-6 and 7-8 centers develop in conjunction with parent advisory committees' plans for the implementation of the Baseline Curriculum in his school.

8. The requirement that new campuses and facilities provided for in Paragraph XIII have programs which include extracurricular activities and full participation in Interscholastic League activities.

9. The requirement that the DISD shall continue to implement its career education plan for grades 1-12 as rapidly as possible.

10. The requirement that the present bilingual program be expanded as rapidly as possible, to all pupils in grades K-6.

11. The requirement that the English-as-a-Second Language program be expanded as rapidly as possible to serve all students who are unable to effectively participate in traditional school programming due to inability to speak and understand the English language with emphasis to expand this programming in grades 7-8 and 9-12.

12. The requirement that the DISD provide multicultural social studies educational programs in all grade levels.

13. The requirement that the Plan A Program (a State special education program) now provided by the DISD be administered according to the State Board of Education Plan and Guidelines.

14. The requirement that students who require special instructional techniques and arrangements by reasons of handicapping conditions be served by the

DISD's special educational program, consistent with the State Board of Education Plan and Guidelines.

15. The requirement that the DISD in concert with teachers, principals and parents develop a clear and simply-stated policy on student discipline including provision for due process procedures and that all parents and students be fully advised of these rules and regulations.

16. The requirement that the DISD develop recruiting and employment policies to insure that competent personnel are employed.

17. The requirement that by 1979-80 the percentages of Black and Mexican-American personnel approximate as a minimum 31% Black and 8% Mexican-American as to teachers, principals and other certified professional personnel excluding the 142 top salaried administrators mentioned below.

18. The requirement as to the 142 top salaried administrative positions that by September 1, 1979, the following ethnic percentages be achieved, to-wit: 44% Anglo, 44% Black and 12% Mexican-American, with the further requirement that one-third of this transition be achieved by September 1, 1977, one-third by September 1, 1978, and the final one-third by September 1, 1979. (A variance of 5% in the percentages is permitted.)

19. The requirement with respect to these 142 positions that at all times after September 1, 1979, the Anglo/Black percentages remain equal except that

both will decrease if the percentage of the Mexican-American enrollment increases above 12%.

20. The requirement that the competence of personnel be continually assessed in accordance with policies and procedures established by the DISD.

21. The requirement that in depth training of teachers, principals and administrators be provided as needed to implement the Court's Order and that attendance of such personnel be required.

22. With respect to the internal accountability system and auditor, the implied requirement of an affirmative action program in recruiting and employment.

23. With respect to the internal accountability system and auditor, the implied requirement to give standardized achievement tests to students.

24. With respect to the internal accountability system and auditor, the implied requirement to have (a) parent involvement efforts, (b) staff development programs, (c) communications and community relations programs, (d) student leadership training programs, and (e) safety and security (including due process procedures programs).

25. The requirement for an external educational audit of DISD.

26. With respect to the external educational audit, the implied requirement that educational offerings

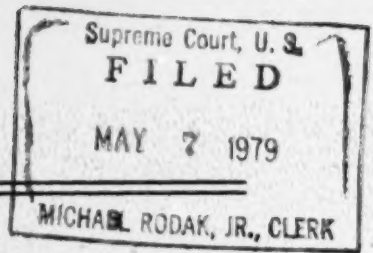
and course offerings in the DISD are subject to the District Court's study, examination and approval.

27. With respect to the external educational audit, the implied requirement that parents and community be encouraged to participate in the educational process on the 9-12 level.

28. To the extent that the external educational audit deals with the operation and management of business and affairs of the DISD and the education, curriculum and program aspects of the DISD, then with respect to the external educational audit, the implied requirement that hearings can be had and action taken by the Court with respect to these matters.

aspropendix

APPENDIX



IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-253

NOLAN ESTES, ET AL.,
Petitioners,
versus

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., ET AL.

No. 78-282

DONALD E. CURRY, ET AL.,
Petitioners,
versus

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., ET AL.

No. 78-283

RALPH F. BRINEGAR, ET AL.,
Petitioners,
versus

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 14,
AUGUST 19 AND AUGUST 19, 1978
CERTIORARI GRANTED FEBRUARY 21, 1979

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 78-253

NOLAN ESTES, ET AL.,
Petitioners,

versus

METROPOLITAN BRANCHES OF THE
DALLAS N.A.A.C.P., ET AL.,
Respondents.

No. 78-282

DONALD E. CURRY, ET AL.,
Petitioners,

versus

METROPOLITAN BRANCHES OF THE
DALLAS N.A.A.C.P., ET AL.,
Respondents.

RALPH F. BRINEGAR, ET AL.,
Petitioners,

versus

**METROPOLITAN BRANCHES OF THE
DALLAS N.A.A.C.P., ET AL.,
Respondents.**

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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In the United States District Court for the
Northern District of Texas, Dallas Division

EDDIE MITCHELL TASBY, et al

versus CA NO. 3-4211-C

DR. NOLAN ESTES, et al

Chronological List of Relevant Docket Entries:

DATE	PROCEEDINGS
10- 6-70 —	Plaintiffs' Complaint
10-15-70 —	Plaintiffs' First Amended Complaint
10-26-70 —	Defendants' Answer
7- 2-71 —	James T. Maxwell's Motion to Intervene (Proposed Intervenor's Complaint attached)
7- 9-71 —	Donald E. Curry, Gerald A. Van Winkle, Joe M. Gresham, Edmund S. Rouget and Robert A. Overton, individually and as next friends for their children, Motion to Intervene as Defendants with Affirmative Pleas (Defenses and Claims in Intervention attached)
7-12-71 —	Opposition and Objections of the Defendants to Interventions
7-16-71 —	Memorandum Opinion
7-22-71 —	Order Allowing Intervention as Defendants: that Donald E. Curry, Gerald A.

Van Winkle, Joe M. Gresham, Edmund S. Rouget and Robert A. Overton have leave to intervene in this cause and hereby made a party Defendant to this cause.

8- 6-71 — Notice of Cross-Appeal on behalf of Defendant-Intervenors Donald G. Curry, et al.

8- 9-71 — Supplemental Order for Partial Stay of Judgment: (1) Par. 10-B of 8-2-71 Judgment, pertaining to pairing/grouping of Kimball, Carter and South Oak Cliff High Schools; (2) Par. 10-C providing for the satelliting of students from Hassell, Browne, Wheatley, Ray, Frazier, Carr, Anderson, Dunbar, Arlington Park, Tyler and Carver elementary school zones — into high schools, as shown on Appendix A of the Judgment; (3) Par. 11-B of said Order pertaining to Junior High Schools and pairing Atwell, Browne, Hulcey, Storey and Zumwalt; (4) Par. 11-C also pertaining to Junior High Schools and pairing Stockard, Edison and Sequoyah; and (5) Par. 11-D pertaining to satelliting students from Hassell, Harris, Arlington Park, Tyler, and part of Carver into Junior High Schools, as shown on Appendix B of said Order, be and the same are hereby stayed unto 1-10-72, and students assigned in the satellite zones by the August 2nd Order are to be reassigned by the Board of

Education to appropriate High and Junior High Schools, taking into consideration capacity and establishment of a unitary school system. In all other respects the August 2nd Judgment shall remain in full force and effect.

8-12-71 — Motion to Intervene as Defendant by the City of Dallas

8-16-71 — Defendant-Intervenors Donald G. Curry, et al Designation of Contents of Record on Appeal

8-17-71 — Supplemental Opinion Regarding Partial Stay of Desegregation Order

8-17-71 — Transcript of Proceedings (Vols. I, II, III, IV and V) with exhibits:
PX-1 thru 5, . . .

8-31-71 — Order granting permission that the City of Dallas to intervene herein as defendant, adopting the Answer of the Defendant Dallas Independent School District as its own with like effect as if fully repeated

8- 5-75 — The Metropolitan Branches of the Dallas N.A.A.C.P.'s Motion to Intervene

8-14-75 — Opposition and Objections of the Defendants to Intervention of the Metropolitan Branches of the Dallas NAACP

8-14-75 — Motion to Intervene by Strom, et al.

8-14-75 — Memorandum Brief in Support of Motion to Intervene (by Strom, et al)

8-21-75 — Opposition and Objections of the Defendants to the Intervention of Dr. E. Thomas Strom, et al.

- 8-21-75 — Plea in Intervention of Dr. E. Thomas Strom, Charlotte Strom, et al
- 8-21-75 — Letter from attorney John W. Bryant requesting addition of certain persons to motion to intervene as parties to this cause
- 8-25-75 — Order that Dr. E. Thomas Strom, et al, and the Metropolitan Branches of the NAACP be permitted to file their respective Pleas of Intervention and become parties in this cause
- 9- 3-75 — Complaint of Intervenors The Metropolitan Branches of the National Association for the Advancement of Colored People
- 9- 9-75 — Motion to Intervene of Ralph F. Brinegar, Wallace H. Savage, Evelyn T. Green, Craig Patton, Dr. John A. Ehrhardt and Harryette B. Ehrhardt, Richard L. Rodriguez and Alicia V. Rodriguez, Mr. and Mrs. Salomon Aguilar, Marjorie M. Oliver, Mr. and Mrs. Ruben L. Hubbard, Robert L. Burns, Dr. Percy E. Luecke, Jr., Dale L. Ireland and Barbara J. Ireland, and Evelyn C. Dunsavage.
- 9-10-75 — Brief of East Dallas Residents in Support of Motion to Intervene
- 9-10-75 — N.A.A.C.P.'s Proposed Plan for Desegregation
- 9-10-75 — Dallas Independent School District Student Assignment Plan for Elementary and Secondary Schools.

- 9-15-75 — Opposition and Objections of the Defendants to the Intervention of Ralph F. Brinegar, et al.
- 9-17-75 — Order granting motion for leave to intervene filed by Ralph F. Brinegar, Wallace H. Savage, Evelyn T. Green, Craig Patton, Dr. John A. Ehrhardt and Harryette B. Ehrhardt, Richard L. Rodriguez and Alicia V. Rodriguez, Mr. and Mrs. Salomon Aguilar, Marjorie M. Oliver, Mr. and Mrs. Ruben L. Hubbard, Robert L. Burns, Dr. Percy E. Luecke, Jr., Dale L. Ireland and Barbara J. Ireland, and Evelyn C. Dunsavage, on behalf of themselves and all other persons similarly situated
- 9-18-75 — Intervenors' (Curry, et al) Motion in Opposition to Findings Not Based on Evidence and Request for Production of Data and Documents
- 9-24-75 — Plea of Intervention by East Dallas Residents (Ralph F. Brinegar, et al)
- 9-26-75 — Order that Dr. Josiah C. Hall be and is hereby appointed as expert advisor to the court in the techniques of school desegregation
- 9-26-75 — DISD's Student Assignment Plan for Elementary and Secondary Schools with 7 maps as exhibits.
- 9-26-75 — DISD's Corrections on student assignment plan

- 10- 7-75 — Intervenor Dr. E. Thomas Strom's Standards for Consideration in Formulating Plans for Additional School Desegregation
- 11-14-75 — Letter dated November 12, 1975 from the Court of Appeals Stating: We have received a certified copy of an order of the Supreme Court denying certiorari in the above cause. This court's judgment as mandate having already been issued to your office, no further order will be forthcoming.
- 12-29-75 — Court Appointed Advisor Hall's Desegregation Plan, with map
- 1-12-76 — Plaintiffs' Proposal to Desegregate the Dallas Independent School District, with Maps
- 2-17-76 — Desegregation Plan of Dallas Alliance, and received comments of James W. Rutledge (attached to Plan). Also received comments of black representatives (attached to Plan)
- 2-20-76 — Order that the Education Task Force of the Dallas Alliance be granted the status of Amicus Curiae for purpose of presenting their ideas and/or Plan for desegregation of the Dallas Independent School District. Copies distributed in courtroom.
- 3- 3-76 — Letter from Jack Lowe, Sr. to Hon. W. M. Taylor, Jr. transmitting revised plan of the Dallas Alliance Education Task Force

- 3-10-76 — Memorandum Opinion and Order (. . . that the modified plan of the Educational Task Force of the Dallas Alliance filed with the Court on March 3, 1976 is hereby adopted as the Court's plan for removal of all vestiges of a dual system remaining in the Dallas Independent School District and the school district is directed to prepare and file with the Court a student assignment plan carrying into effect the concept of said Task Force plan no later than March 24, 1976)
Copies distributed to counsel in courtroom.
- 3-15-76 — Supplemental Order (. . . some questions have arisen regarding the Court's adoption of the Dallas Alliance's plan. So that there is no misunderstanding . . . the Court intended by the order of March 10, 1976 to adopt the concepts suggested by the plan of the Educational Task Force of the Dallas Alliance. The staff of the school district shall take these concepts and adapt them to fit the characteristics of DISD. The Court recognizes that during this process, a certain amount of flexibility is necessary. The Court expects the school district to put into effect the concepts of the Dallas Alliance plan. The specifics of the desegregation plan for the DISD will be embodied in the Court's final order

which will be entered in approximately two weeks)

- 3-24-76 — Dallas Independent School District, A Student Assignment Plan Carrying Into Effect The Concept Of The Educational Task Force Of The Dallas Alliance
- 3-26-76 — Dallas Independent School District's Motion to Alter or Amend March 10, 1976, Opinion and Order
- 3-29-76 — Defendant DISD's Resolutions and Proposal On Non-Student Assignment Concepts
- 4- 1-76 — Addendum To Student Assignment Plan by DISD.
- 4- 2-76 — (Mullinax, Wells, Mauzy & Babb) Plaintiffs' Motion for Attorneys' Fees and Costs
- 4- 5-76 — (Dallas Legal Services Foundation) Plaintiffs' Motion for Attorney Fees and Costs
- 4- 7-76 — Final Order . . . in order to carry out the concepts embodied in the desegregation plan of the Educational Task Force of the Dallas Alliance, the School Board of the Dallas Independent School District is ordered and directed to implement the following items: Major Sub-Districts . . . Student Assignment Criteria Within Sub-Districts . . . the K-3 Early Childhood Education Centers . . . the 4-8 Intermediate and Middle School Centers . . . 9-12 Magnets and High Schools . . . Special

Programs . . . Majority to Minority Transfer . . . Minority to Majority Transfers . . . Curriculum Transfers . . . Transportation . . . Changes in Attendance Zones . . . Discipline and Due Process . . . Facilities . . . Personnel . . . Accounting System and Auditor . . . Tri-Ethnic Committee . . . Retention of Jurisdiction: To the end that a unitary school shall be achieved by the DISD, the U.S. District Court for the Northern District of Texas retains jurisdiction of this case)

- 4- 7-76 — Supplemental Opinion and Order
- 4-15-76 — Supplemental Order correcting clerical errors in the student assignments made in the Final Order per the attached Appendix . . . incorporated in and made a part of the Final Order of April 7, 1976
- 4-20-76 — Notice of Appeal by Oak Cliff Branch and the South Dallas Branch of the Dallas N.A.A.C.P. from judgment entered April 7, 1976
- 4-20-76 — Supplemental Order sustaining Motion of Plaintiffs to Alter or Amend (the judgment entered April 7, 1976 . . . ordered that the . . . judgment, Sec. VI, subsection 2 on page 11, be and hereby is amended to read as follows: "2. English-as-a-Second Language (ESL) programming shall be expanded as rapidly as possible to serve all students who are unable to ef-

fectively participate in traditional school programming due to inability to speak and understand the English language. Emphasis shall be given to expanding ESL programming in grades 7-8 and 9-12")

- 4-22-76 — Defendant DISD's Notice of Cross-Appeal from April 7, 1976 Judgment
- 4-22-76 — Notice of Appeal by the John F. Kennedy Branch of the Metropolitan Branch of NAACP from the Student Assignment Portion of the final judgment entered on April 7, 1976
- 4-22-76 — Plaintiffs' Thelma Crouch, Ruth Jefferson, Bobbie Cobbins, Ludie Cobbin and Richard Medrano Notice of Appeal from Judgment entered April 7, 1976
- 4-23-76 — Intervenor, Donald E. Curry, et al Notice of Cross-Appeal from the Final Judgment-Order entered April 7, 1976
- 4-26-76 — Notice of Cross Appeal by Plaintiffs Tasby and Medrano from Student Assignment Portions of Judgment entered April 7, 1976; in filing this notice of Cross Appeal Ricardo Medrano withdraws his prior Notice of Appeal filed on April 22, 1976. (in forma pauperis)
- 4-30-76 — Plaintiffs' Brief in Support of Motion for Attorneys' Fees and Costs
- 7-20-76 — Order that the DISD pay the following named claimants the amounts set opposite their names: Sylvia M. Demarest (to

be paid to Dallas Legal Services \$66,792; Edward B. Cloutman III \$32,514 . . . that the motion of the DISD to set aside order taxing costs against defendants and in favor of plaintiffs is hereby denied

- 7-20-76 — Memorandum Opinion
- 8- 9-76 — Transcript of Proceedings (6) (six vols) held February 2, 1976. No exhibits
- 8- 9-76 — Transcript on Hearing on Motions held September 16, 1975
- 8- 9-76 — Transcript on Hearing held December 18, 1975. No exhibits.
- 8-18-76 — Supplemental Order Changing Attendance Zones of James Madison High School and Lincoln High School (. . . that the Court's Final Order of April 7, 1976, including Appendix A thereto, be and the same is hereby changed, altered and amended as follows: (a) Students in grades 9, 10, 11 and 12 residing in the Charles Rice Elementary School attendance zone are assigned to Lincoln High School and (b) Students in grades 9, 10, 11 and 12 residing in the Paul L. Dunbar Elementary School attendance zone are assigned to James Madison High School)
- 11- 1-76 — Transcript of Proceedings (3 vols) of Vol. VII
- 11-15-76 — Transcript of Proceedings (3 vols) Vol. VIII. No exhibits. (Held February 27, 1976)
- 11-19-76 — Transcript of Proceedings (3 vols of Vol. IX). (No exhibits) Held March 3, 1976.

- 1- 5-77 — Transcript of Proceedings (Vol. X) held March 5, 1976. No exhibits.
- 4-25-77 — Transcript of Proceedings of Hearing of Defendants' Motion for Approval of Site Acquisition, School Construction and Facility Abandonment held February 24, 1977.
- 10-26-77 — Argument and Submission, United States Court of Appeals for the Fifth Circuit.
- 10-29-77 — Motion (of Curry, et al) to File Post Submission Memorandum on the Issue of the Law of the Case
- 4-21-78 — Opinion of the United States Court of Appeals for the Fifth Circuit in Nos. 76-1849, 77-1752 and 77-2335
- 4-21-78 — Judgments of the United States Court of Appeals for the Fifth Circuit in each case
- 5- 5-78 — Petition for Rehearing (The Dallas Independent School District), United States Court of Appeals for the Fifth Circuit
- 5- 5-78 — Petition for Rehearing En Banc of Appellees-Cross Appellants Donald E. Curry, Et Al, United States Court of Appeals for the Fifth Circuit
- 5-22-78 — United States Court of Appeals for the Fifth Circuit's Letter Advice to Counsel in No. 76-1849 Denying Petition for Rehearing and Rehearing En Banc
- 5-26-78 — Motion for Stay of Mandate (The Dallas Independent School District), United States Court of Appeals for the Fifth Circuit

- 8-14-78 — Order of the United States Court of Appeals for the Fifth Circuit denying motion of appellees, Dallas Independent School District, et al., for stay of mandate.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, et al.,
Plaintiffs

versus No. CA 3-4211-C

DR. NOLAN ESTES, et al.,
Defendants

Filed: Aug. 25, 1975

ORDER

On this the 25 day of August, 1975, came on to be heard the motions of Dr. E. Thomas Strom, et al., and of the Metropolitan Branches of the Dallas NAACP that they be permitted to intervene in the above styled matter and this Court having heard evidence and argument of counsel is of the opinion that they should be granted;

It is therefore ORDERED that Dr. E. Thomas Strom, et al., and the Metropolitan Branches of the NAACP be permitted to file their respective Pleas of Intervention and become parties in this cause.

/s/ W. M. TAYLOR, JR.
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Number and Title Omitted)

Filed: April 30, 1976

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS

* * *

[4] Finally, the plan adopted by the Court in its order of March 10, 1976, together with Supplemental Opinion and Orders dated April 7, 1976 and April 15, 1976 adopt and/or incorporate almost every precept proposed by plaintiffs for student assignment and non-student assignment features of the remedy. The DISD's contention that plaintiffs have not prevailed in this litigation is simply constructed out of whole cloth.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Number and Title Omitted)

Filed: Jul. 20, 1976

MEMORANDUM OPINION

* * *

[3] The DISD suggests next that plaintiffs are not the prevailing party in this litigation. The Court finds this assertion untenable. Plaintiffs prevailed on the liability issue when the Court held on July 16, 1971, that the DISD was not operating a unitary school system. On appeal to the Fifth Circuit from the Court's Order of August 2, 1971, the United States Court of Appeals sustained the plaintiffs' claims and rejected every contention of the DISD other than faculty assignment ratios. Finally, the plan adopted by the Court on March 10, 1976, and Ordered to be implemented on April 7, 1976, and April 15, 1976, incorporated almost every precept proposed by plaintiffs for both student assignment and non-student assignment remedies.

* * *

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-1849

D. C. Docket No. CA3-4211-C

EDDIE MITCHELL TASBY and
PHILLIP WAYNE TASBY,

by their parent and next friend,

SAM TASBY, ET AL.,

Plaintiffs-Appellants

Cross-Appellees,

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P.,

Plaintiffs-Intervenors

Appellants-Cross Appellees,

versus

DR. NOLAN ESTES, ET AL.,

Defendants-Appellees

Cross Appellants.

Appeals from the United States District Court for the
Northern District of Texas

Before COLEMAN, TJOFLAT and FAY, Circuit
Judges.

Filed: Aug. 16, 1978

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and reversed in part; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that defendants-appellees pay the appellants' costs and appellants pay the costs of appellee, Highland Park; all other parties are to bear their own costs.

April 21, 1978

ISSUED AS MANDATE: AUG 15, 1978

A true copy

Test: EDWARD W. WADSWORTH

Clerk, U.S. Court of Appeals, Fifth Circuit

/s/ KIM B. DAVIS

Deputy

Aug. 15, 1978

New Orleans, Louisiana

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(Number and Title Omitted)

Filed: Aug. 14, 1978

ORDER:

The motion of APPELLEES, DALLAS INDEPENDENT SCHOOL DISTRICT, ET AL. for stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

* * * *

/s/ GERALD B. TJOFLAT
UNITED STATES CIRCUIT
JUDGE

Quotation of language prepared by Petitioners Brinegar, et al.

"Memorandum Order filed July 16, 1971, is printed as Appendix A to Petitioners Brinegar's Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

"Opinion of the United States Court of Appeals for the Fifth Circuit dated April 21, 1978, is printed as Appendix C to the Petition of Nolan Estes, et al's Petition for Writ of Certiorari (pages 130a-146a)."

Quotation of language prepared by Petitioners Curry, et al.

"The opinions, orders and judgment of the District Court are set forth in Appendix "B" to the Petition for Certiorari of Nolan Estes, et al. (pages 4a-129a) and are reported in part at 412 F.Supp. 1192. The opinion of the Court of Appeals for the Fifth Circuit is set forth in Appendix "C" to the Petition of Nolan Estes, et al. (pages 130a-146a) and is reported at 572 F.2d 1010.

"The prior opinions, orders and judgment of the District Court which are relevant to the issues now presented are found at 342 F.Supp. 943 and consist of the following:

- (a) Memorandum Opinion (July 16, 1971);
- (b) Memorandum Opinion on Final Desegregation Order (August 17, 1971);
- (c) Supplemental Opinion Regarding Partial Stay of Desegregation Order (August 17, 1971)."

Quotation of language prepared by Respondents Tasby, et al.

"The opinion of the United States Court of Appeals for the Fifth Circuit in *Tasby v. Estes*, on appeal from the July 16, 1971 orders of the trial court, is found at 517 F.2d 92 (5th Cir. 1975)."

Quotation of language prepared by Respondents Tasby, et al.

"That a Petition for Writ of Certiorari was filed by Petitioners Estes, et al., from the opinion of the United States Court of Appeals for the Fifth Circuit cited immediately above."

Quotation of language prepared by Respondents Tasby, et al.

"That Certiorari was denied by the Supreme Court of the United States in *Estes, et al. v. Tasby, et al.*, and such denial is found at 423 U.S. 939 (1975)."

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, ET AL

versus No. CA-3-4211-C

DR. NOLAN ESTES, ET AL

TRANSCRIPT OF PROCEEDINGS

VOLUME I

Filed: August 9, 1976

* * * *

[60] DR. NOLAN ESTES,
one of the Defendants, being duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. WHITHAM:

* * * *

[62] Q Now, with respect to those figures then in the intervening months between the August figures and the [63] December figures you lost what percent of your Anglo students?

A There was a loss of one percent in Anglo students between the August enrollment figure date and the December 1st date.

Q And with respect to the difference in student percentages between the August and December dates with respect to the black student population, what change occurred?

A There was more than a one and a half of one percent increase in black population between August and December.

Q And with respect to the Mexican-American population, did it change?

A There was four-tenths increase between the August and the December dates for Mexican-Americans.

Q Now, Dr. Estes, is Defendant's Exhibit Number 10 a copy of the Board of Education's Plan submitted pursuant to the Court's request?

A Yes, sir, it is.

Q And is Defendant's Exhibit Number 11 a copy of the Board's Plan submitted to the Court pursuant to the Court's request only reflecting the calculations based on the new student population figures we have discussed?

A Yes, sir, it is.

[64] MR. WHITHAM:

Judge, for the record we will introduce in evidence or offer in evidence Defendant's Exhibits 10 and 11.

THE COURT:

They are admitted.

Q Dr. Estes, again, directing your attention to paragraph 1.2 of the Board's Plan.

A Yes.

MR. WHITHAM:

For the record, Judge, I would like to have it so I don't search for the exhibit each time, can it be understood if we now refer to the Board's Plan we are making reference to Defendant's Exhibit Number 11 for point of reference in the record?

THE COURT:

Yes.

Q Directing your attention again to the Board's Plan, Dr. Estes, would you please look for the illustration of the percentages for the first grade? Do you remember where the first grade is located?

A Yes, sir.

Q And you have what percent of Anglo first graders in the District?

A At the first grade level we have 36.7 percent Anglos in the School District.

Q What percent of kindergarten students do you have in the District that are Anglo?

[65] A 34.8 percent kindergarteners are Anglos.

* * * *

[66] Q By the time they reach the eleventh and twelfth grades many times they have passed the compulsory [67] attendance age of going to school anyway?

A The largest dropout rate between the ninth and eleventh grades is when students reach the compulsory attendance age.

Q Now, in your mind, as an expert and administrator of the Dallas Independent School District and elsewhere have you been able to arrive in your staff at a projection as to what the total enrollment by race would be in the Dallas Independent School District in the year 1980 based on your experience as a school administrator in Dallas?

A Yes, sir, we make annual projections.

Q What is the projection of the ethnic composition of the Dallas Independent School District in 1980?

A Based on our projections which uses, of course, enrollment for the past five years, as well as other factors, we estimate that the percentage of Anglo enrollment in 1980 will be 26 percent of the total school population as opposed, of course, to the 41 percent at the present time.

Q All right. What will be your projected black enrollment in 1980?

A Our black enrollment in 1980 will be 57 percent as opposed to 44.5 percent at the present time.

Q What would be your projected Mexican-American [68] enrollment in 1980?

A Based on our projection the Mexican-American would represent 18 percent of our total enrollment in 1980 as opposed to 13.4 percent at the present time.

Q Dr. Estes, let us, before we go further with the Plan, in order that the parties might know and the Court, could you give me your experience as a school

man and school administrator since you became employed in the school business and please begin with your first employment in the school business and bring me up-to-date.

A My first employment was in 1950, '49 and '50 when I joined the staff of the Bruni Independent School District as a high school science and math teacher. I moved from there into the Service, and after receiving a master's degree at the University of Texas joined the staff at Waco.

Q You have a master's degree in what, Dr. Estes?

A In school administration.

I was in the Waco Independent School District as an elementary teacher and then later as a principal.

In 1959 I went to Chatanooga, Tennessee as the assistant superintendent for instruction.

In 1962 I went to St. Louis County, Riverview Gardens, as superintendent of the schools.

* * * *

[71] Q Dr. Estes, I will hand you what has been marked for identification as Defendant's Exhibit Number 13 and I will ask you if you can identify that as an exhibit representing historical enrollment in the Dallas Independent School District for the years given? Can you identify that exhibit?

A Yes, sir.

MR. WHITHAM:

Your Honor, we will offer in evidence Defendant's Exhibit Number 13.

THE COURT:

It's admitted.

Q Dr. Estes, please look at Defendant's Exhibit 13, in order to help the Court and the parties perhaps follow the calculations shown thereon, you have begun with the school year '69-'70, have you not, and ended with the school year 1975 as of October?

A Yes, sir.

Q That represents how many school years?

A That represents five school years.

Q Now, in making the calculations shown on the exhibit I noticed that there has been a subtraction of kindergarten students from each total figure shown, do you see that?

A Yes, sir.

* * * *

[76] Q And does Defendant's Exhibit Number 1 entitled Racial Composition reflect the racial composition on a map of the student population in the Dallas Independent School District as believed between black and white students?

A Yes, sir.

Q With respect to the color code, the orange color represents the location of black students in the year 1960?

A That's correct.

Q The yellow colored area on Defendant's Exhibit Number 1 represents the location of white students in 1960?

A That is correct.

Q Now, that far back separate figures were not kept with respect to Anglos as distinguished from Mexican-American students, were they not?

A That's right.

Q Do you know of your own knowledge the approximate composition of the Mexican-American student body in that year?

A The only difference in that map would be what [77] we call Little Mexico or Short North Dallas around the Travis Elementary School and one section around Juarez and Douglass in West Dallas.

Q To that extent, the Mexican-American population would be shown in the yellow area on the map?

A That's correct.

MR. WHITHAM:

Am I free to move up here, Your Honor?

THE COURT:

Oh yes, sure.

Q Did I also ask you, Dr. Estes, to cause to be prepared that would reflect the current residential patterns of the students within the Dallas Independent School District?

A Yes, sir.

Q And is that shown on Defendant's Exhibit Number 2?

A It is.

Q And by students, we're talking about those enrolled in the school, not those of school age who

might reside within the Dallas Independent School District?

A That's right.

Q Now, with respect to the color codes shown on Defendant's Exhibit Number 2, what student body population is reflected by the area in yellow?

A The only remaining predominantly white [78] population.

Q What student body population is reflected in the area colored pink?

A That is a naturally integrated area representing minority and Anglo.

Q And what is the student body population reflected in the dark orange color shown on Defendant's Exhibit 2?

A The dark orange represents predominantly Mexican-American or black enrollment.

Q Now, when we get to parts of further explanation of the School District's Plan and we happen to refer to those parts of the Plan and I believe it's part three on the integrated map, if I follow my index correctly. We have referenced generally to the area shown in pink on Defendant's Exhibit 2, is that correct?

A That is correct. I believe it's area four, the naturally integrated areas.

Q The naturally integrated areas, I'm sorry.

In further testimony you give with respect to the School District's Plan, when we talk about the pairing and clustering of the remaining Anglo students or the predominantly Anglo areas with certain minority areas, what area or color code on the map has reference to the location of those Anglo students?

[79] A Two areas, the remaining white population is reflected by the yellow colored area —

Q Let me stop you right there. Then in that part of the School District's Plan pairing the predominantly Anglo area, this map and its yellow area shows the location of those Anglo students?

A Yes, that's right.

Q When there is a pairing of the Anglo students under the Board's Plan with certain minority areas of the School District, those minority areas paired with the yellow area are found in various locations within the dark orange area, is that correct?

A Yes. You skip over the naturally integrated areas to the orange areas.

Q All right. So that when you pair the remaining Anglos with certain minorities you have in effect paired students who are Anglo in the yellow area with certain minority students in the —

A Predominantly minority area.

Q — predominantly minority areas shown in dark orange and you've skipped over the naturally integrated area shown in pink that lies between them —

A That's correct.

Q — is that correct?

Now, when we get to that part of the [80] School District's Plan dealing with those minority schools that will remain one race schools, those remaining one race schools will be found in varying parts of the color code orange on Defendant's Exhibit Number 2, is that correct?

A That's correct.

Q Did I ask you to cause to be prepared a map —

THE COURT:

Let me ask a question with reference to — Dr. Estes, to Exhibit Number 1, Map Number 1: Do you have the census figures for that year nineteen —

THE WITNESS:

Yes, sir, we have the scholastic census for that year.

THE COURT:

Do you know approximately what it is?

THE WITNESS:

No. Offhand I don't have that information. We can get that, however.

THE COURT:

All right, go ahead.

Q Did I ask you to cause to be prepared a map that would reflect the growth for a three-year period broken down by 1960, 1965 and 1970 of the growing black scholastic population within the Dallas Independent School District?

A Yes, sir.

Q Then did I ask you also to cause to be made on [81] that same map a showing, graphically, of areas today that in 1965 were composed of at least twenty-five percent black students?

A Yes, sir.

Q And did I also ask you to show on that map the areas in 1975 that are at least twenty-five percent Mexican-American in the Dallas Independent School District's scholastic population?

A Yes, sir.

Q And did I also ask you to show on that map the area that the School District finds to be at least twenty-five percent minority combined, that is twenty-five percent of either black or Mexican-American or both?

A Yes, sir.

Q Now, with respect — is all of that reflected on Defendant's Exhibit Number 3?

A Yes, sir, it is.

Q Now, in using the figures we there talk about — again, we are talking about students attending the Dallas Independent School District, not total eligible scholastics by reason of age or the right to attend school.

A That's correct.

Q Now, with respect to the black population on Defendant's Exhibit Number 3, those areas shown as green [82] on Defendant's Exhibit Number 3 represent the location of the black population in 1960, is that correct?

A Yes, sir, that's right.

* * * *

[85] MR. WHITHAM:

This is known as the John Field attendance area, should you need to know that.

And which particular schools are served —

THE WITNESS:

That would be the John Ireland-Hawthorne area.

Q (Continuing by Mr. Whitham) So by looking at this map you can show growth patterns of minority areas as shown on Defendant's Exhibit 3 as they now might be reflected in total color schemes on Defendant's Exhibit Number 2?

A That's correct.

MR. WHITHAM:

We offer in evidence Defendant's Exhibits 1, 2 and 3, Your Honor.

THE COURT:

They're admitted.

MR. WHITHAM:

Your Honor, if I failed to do so, I offer in evidence Defendant's Exhibit 13, the historical enrollment pattern. Mr. Cloutman was kind enough to tell me I had not offered that.

THE COURT:

All right. I thought it was admitted, but it is admitted again if —

Q Now, Dr. Estes, with your testimony today together with the historical enrollment patterns of the

School District, Exhibit 13 together with the maps, Plaintiff's Exhibits 1, 2 and 3 (sic) that will contain the evidence of the change in ethnic patterns within the [86] Dallas Independent School District showing the matter with which we are concerned?

A Yes, sir, over the past fifteen years.

* * * *

[103] Q And all that anyone would need to do is take [104] the material compiled in the Board's Plan and compare the numbers on Defendant's Exhibit 5 and they would be able to tell what students from what schools are to go to school together under the Board's Plan?

A That's correct.

MR. WHITHAM:

Does the Court have any question about the numbering system or the assignments?

THE COURT:

No.

Q Now, with respect to fourth and fifth graders in the naturally integrated area, the yellow hatched area, those students continue to attend their neighborhood schools, do they not —

A Yes, sir.

Q — under the Board's Plan?

A Under the Board's Plan they would continue to go to their neighborhood school as they do now.

Q So the Board's Plan does not contemplate transporting children or reassigning them if they are within the yellow hatched or naturally integrated area?

A Yes, the Board's Plan doesn't disturb any of the naturally integrated areas in the city.

Q Therefore, if a child attends school in what is a pink area on Defendant's Exhibit 2, that child is not involved in further transportation and the concept of the neighborhood school is preserved in those parts [105] of the School District colored in pink?

A Yes, sir, because they're already integrated.

Q All right —

THE COURT:

Then the neighborhood school concept is preserved in grades K through 5?

THE WITNESS:

Through six.

THE COURT:

Six.

THE WITNESS:

Or seventh in some instances.

THE COURT:

I see.

MR. WHITHAM:

If the Court will look in the School Board's Plan of the integrated neighborhoods of part four, Your

Honor, you will see that some of those buildings currently serve even K-7.

THE COURT:

I see.

MR. WHITHAM:

In that grade configuration, whatever it is, continuous.

THE COURT:

I see.

MR. WHITHAM:

If that answers that question.

THE COURT:

I see.

Q Now, with respect to fourth and fifth graders in the part of the Board's Plan known as part seven described as a certain part of the predominantly minority parts of the School District, you have reference to an area shown on Defendant's Exhibit 5 and 6 that is green hatched and brown hatched, is that correct?

[106] A Yes, sir, that's correct.

* * * *

[218] CROSS EXAMINATION

BY MR. CLOUTMAN:

* * * *

[278] Q So you have thirty-two hundred and fifty minority students you anticipate will be integrated on what basically is a voluntary basis next year?

[279] A In the initial implementation of the Plan.

Q And you expect that to increase to ten thousand?

A We would expect that to increase considerably over the next three years; as much as ten thousand, yes.

Q So by my rough subtraction that leaves you with roughly forty thousand minority students not involved in any integrated atmosphere?

A That would be close to correct.

MR. CLOUTMAN:

Excuse me, Your Honor, one second.

THE COURT:

Okay.

Q (By Mr. Cloutman) Doctor, just for my own purposes and for comparison, can you or do you know the Dallas Independent School District's ethnicity by population as opposed to student enrollment?

A I don't. I'm assuming it's about twenty-five or thirty percent black, ten to fifteen percent Chicano and the remainder Anglo.

Q Would you estimate it would approximate the population breakdown by ethnicity of the City of Dallas?

A That's right.

MR. CLOUTMAN:

Thank you. I don't think we have any further questions at this time, Your Honor.

* * * *

[399] RE-DIRECT EXAMINATION

BY MR. WHITHAM:

* * * *

[404] Q Now, the Dallas Independent School District from the maps in evidence appears to be something less than a rectangle. Do you have any idea of its dimensions from its furthest northernmost point to its furthest [405] southernmost point?

A It goes to the County line in the north and all the way to the County line in the southeast or approximately there and this distance is approximately thirty-five miles from the northwest to the southeastern part of the district.

Q And do you know approximately how far it is from what's called the southwest quadrant in Oak Cliff just below Hulcy Junior High School to the northernmost point near the Dallas County line?

A Yes, that's about twenty-five miles.

Q Do you know the approximately total square miles in the Dallas Independent School District?

A Yes, sir. We occupy three hundred fifty-one square miles within the nine hundred square mile County.

Q Now, you do not have an actual population census of just the Dallas Independent School District, do you?

A No, we do not.

Q Do you know the approximate population of the City of Dallas as a total?

A As I remember, eight to nine hundred thousand is the population of the City of Dallas.

Q And of that total do you know what percent you serve as to that part of the Dallas Independent [406] School District lying within the City of Dallas?

A I would estimate we serve eighty percent of the students living in the City of Dallas and in our school district.

Q The boundaries of the City of Dallas and the Dallas Independent School District are not conterminous are they?

A Unfortunately they are not conterminous.

Q Please turn to Defendants' Exhibit Number 12, if you would, to page 1 and let's be sure we are together as to certain confusion about the number of so-called one race schools that will remain under the board's plan.

A All right.

Q As I look at page 2 of Defendants' Exhibit Number 12 under the third column predominantly

minority schools, I see that there are forty-two attendance zones that will remain predominantly one race.

A That's correct.

Q Do you see that figure?

A Yes, sir.

Q We are agreed there will be forty-two attendance zones that remain one race under the board's plan, is that correct?

A Correct.

* * * *

TRANSCRIPT OF PROCEEDINGS

VOLUME II

(Number and Title Omitted)

Filed: August 9, 1976

* * * *

[2] KATHLYN GILLIAM,
called as a witness in behalf of the Plaintiffs, being duly
sworn, testified as follows:

* * * *

[49] CROSS-EXAMINATION

BY MR. WHITHAM:

* * *

[54] Q You were just trying to give the Judge your experiences, not the experiences of the Tri-ethnic Committee?

A Correct.

Q Now, how many times have you run for the board of education of the Dallas Independent School District?

A I ran twice, once unsuccessfully.

Q And then following the establishment of single member trustee districts you were elected, were you not?

A Exactly.

Q And you have had for some time an interest and concern for education in Dallas for its children, is that correct?

A That's been my life's work as an adult.

Q And you have sought to carry out that work as a member of the board of trustees, have you not?

A Correct.

Q And when you would seek the office of trustee in elections, would you make it known to voters your concerns about education in the Dallas Independent School District?

A Correct.

* * *

[57] Q Would like any of your rights to be a policy [58] maker for the Dallas Independent School District taken away from you?

A I would not, not only my rights as a board member but any of my rights, my rights as a citizen.

Q Your rights as a board member?

A Yes.

Q You don't want anyone to take those away from you, do you?

A Correct.

Q No one, is that correct?

A That's correct, I do not want my rights as a board member or any other rights taken away from me.

Q You want to exercise fully your rights as a trustee of the Dallas Independent School District?

A Right.

Q And are you satisfied that you will continue to exercise your policy making obligations on the Dallas Independent School District as your good conscience dictates?

A Yes.

Q How is the board now composed racially? Could you describe the racial composition of the board?

A Two blacks, one Mexican-American and six Anglos.

Q Now, do you actively speak up when board [59] policy is under consideration on behalf of black citizens within the Dallas Independent School District?

A Not only do I speak up on behalf of black citizens in the DISD, I speak up in terms of what I think is just and fair and right.

Q All right. Who is the other black member of the board?

A Dr. Emmett Conrad.

Q Does Dr. Emmett Conrad also speak up for the black patrons of the DISD?

A Yes, and others, too.

Q Others, too?

A Yes.

Q Who is the Mexican-American member?

A Roberto Medrano.

Q Does he speak for the Mexican-American patrons of the Dallas Independent School District?

A And others.

Q And others?

A Yes.

Q Do the white members of the board of education speak up for their constituents and patrons of the Dallas Independent School District?

A And others.

Q And others?

[60] A Yes.

Q On the board of education at this time there is a good bit of give and take to resolve the issues of the day, is there not?

A Quite a bit of conversation.

Q That's right. Now, not all views that any one trustee ever advances at any given point always carries the day, does it?

A That's the idea of democracy.

Q You win some and you lose some?

A Yes.

Q Right.

A Yes.

Q Now, to the extent that you win some and you lose some that's how public bodies' policy making decisions ultimately get carried out, is it not?

A That's correct.

Q In your judgment do you feel that you are as active and ardent a spokesman for the black position in Dallas as anyone you can conceive at this time?

A Well, I would not like to compare myself to anybody else.

Q Do you feel that you're an effective spokesman for the black patrons of the Dallas Independent School District?

[61] A I feel that I do my best.

* * * *

[257] JOSE A. CARDENAS,
the witness having been duly sworn by the Court,
testified on his oath as follows:

* * * *

[326] CROSS-EXAMINATION

BY MR. MARTIN:

* * * *

[333] THE WITNESS:

Counselor asked the question in deposition, would fifty percent constitute a significant proportion? He is interpreting my answer, which was "yes", to mean that fifty percent of the people in Dallas are satisfied, or the minority people or the Mexican American people in Dallas, or the ones I talked to are dissatisfied with the School and fifty percent were not. No question was asked that I can remember, and certainly not the one that he has read on three occasions, what was the number of people or the proportion of the people that were satisfied and dissatisfied? The question was, would fifty percent of the people be statistically [334] significant? And my answer was, yes. Now, he is interpreting this to mean that I said fifty percent of the people were satisfied and fifty percent of the people were dissatisfied and I will not admit to this, sir. Because in what he has read, anyway, I did not make any statement as to the percentage of people dissatisfied and satisfied. It was a question as to whether fifty percent would be statistically significant.

MR. MARTIN:

We'll offer in evidence, Your Honor, pages 31, 32, and 33. And to save time, I won't read them at this time, but may they be considered to be a part of the record?

THE COURT:

Yes, they will.

Q (By Mr. Martin) Doctor, do you have any difficulty in separating your own ethnicity from your professional judgments and opinions?

A I would imagine so, sir. I think that any person is completely schizophrenic who can separate one aspect of his personality —

Q It would be a hard thing to do; is that right, sir?

A Yes sir.

Q Now, as I understand you here in your testimony here this morning, based on your interviews of the patrons, [335] based on your interviews of the School District personnel, based on your visit to two schools — two or three, and based on your examination of these documents that have been discussed here you found that the Bilingual Program here is relatively innovative, with many desirable traits and accomplishing desirable results; is that correct?

A Yes sir.

Q Were you a little surprised to find that?

A No sir.

Q When you consider what you have thought of such programs and the dealing with the uniqueness of minority students by school people, what you have thought of that in the past, does what you found here seem a little inconsistent with your previous judgments about that matter in general?

A No sir.

Q Dr. Cardenas, I will refer you to — you are the same Dr. Cardenas that submitted an education plan for the Denver Public Schools that was filed in the Keys case?

A Yes sir.

Q May I refer you to some statements in that report prepared by you? On page 6 of it — I'll show you any of these if you can't recall what you said — you said: The dismal failure of our schools in the education of minority children can be attributed to the inadequacy of the [336] instructional programs.

Do you still believe that?

A Yes sir.

Q And at another place in your proposal, you had this to say: That the incompatibility between minority children and most school systems can be summarized in three generalizations: One, most school personnel know nothing about the cultural characteristics of the minority school population.

Right, so far?

A Yes sir.

Q Two, that few school personnel who are aware of these cultural characteristics seldom do anything about it.

Do you recall that and that was your opinion?

A Yes sir.

Q Number three, on those rare occasions when the school does attempt to do something concerning the culture of minority groups, it always does the wrong thing.

Do you still believe that?

A Yes sir.

Q Do you think we're doing the wrong thing here in Dallas?

A I think you're doing some things right in Dallas. I

don't think it's universal and applicable to all of the minority population in Dallas.

[337] Q And you came to Dallas to make this investigation with these things in mind: You thought that school personnel — the few school personnel who are aware of these cultural characteristics seldom do anything about it and that on those rare occasions when they do attempt to do something, they always do the wrong thing; you thought that when you came to Dallas?

A Yes sir.

Q And you weren't surprised when you found a pretty good program here?

A I wasn't surprised when I found some elements of a good program here, no sir.

Q Your main criticism, as I understand you, is there is just not enough of it? What you saw is good, but there's not enough of it; is that right?

A It's not involving enough kids, there's not enough of it.

THE COURT:

I didn't get your answer.

THE WITNESS:

It is not involving enough children and it is not extensive enough.

Q (By Mr. Martin) What there is of it is good?

A Yes sir.

Q Now, you spoke of the underachievement or under-performance —

MR. MARTIN:

Just a few more minutes, Judge.

[338] Q (By Mr. Martin) — the underachievement or underperformance of minority children in Dallas.

A Yes sir.

Q Now, in making that judgment about underachievement and underperformance, I would like to ask, compared to what?

A To the white Anglo population of the Dallas Independent School District.

Q Now, can you tell me this —

A And to national norms.

Q And to national norms, that's what I wanted to ask you about.

Do you believe that the minority children in the Dallas School District, that the performance of minority children in the Dallas School District is on a par with the performance of minority children on a national basis?

A Yes sir.

Q Yes sir.

You spoke a few minutes ago about dropouts and the reason for dropouts. Certainly the kind of programs in the schools doesn't serve as the only reason for dropouts, does it?

A Sir?

Q The kinds of programs that schools offer, that is not the sole reason for dropouts?

A No sir.

* * *

[340] Q Yes sir.

A But school has a lot to do with it.

Q Does home have something to do with it?

A Both home and school have something to do with it.

Q The problems attendant to arriving at school, the sheer getting there, does that have something to do with whether a child drops out of school?

A Yes sir.

Q Does the fact that a child feels uncomfortable in a given student body have anything to do with whether he might drop out or not?

A Yes sir.

Q Does his problems with law enforcement have anything to do with whether he might drop out of school?

A It may.

Q Does his desire to go to work at a particular job he has in view have anything to do with whether a child drops out of school?

A It may.

Q Yes sir.

To sum up, Dr. Cardenas, then we're agreed that what's being done here is good but you're saying there's just not enough of it; is that the substance of it?

A Yes sir.

MR. MARTIN:

Thank you, sir.

* * *

TRANSCRIPT OF PROCEEDINGS

VOLUME III

(Number and Title Omitted)

Filed: August 9, 1976

* * *

[2] CHARLES V. WILLIE,
called as a witness in behalf of the Plaintiffs, being duly
sworn, testified as follows:

* * *

[126] CROSS EXAMINATION

BY MR. MOW:

* * *

[134] Q What transportation patterns did you consider?

A I did not consider transportation particularly. I considered them in general and the general consideration is that transportation is an essential component of urbanization. People drive long distances to work, they drive long distances to worship. They drive long distances for recreation. Therefore, I could not see any reason why traveling would be contraindicative for getting a quality education.

Q Did you consider how the roads are laid out within Dallas and how much time it takes to get from one part of town to another?

A In my driving around the city I did make observations on the road systems in Dallas in which I found to be exceedingly good compared with the road system in Boston.

Q Did you make any time studies as to how long it would take to get from certain areas of the city to certain other areas?

A Yes, I made time studies of how long it would take to go from the tip end of North Dallas to Oak Cliff and I found that to be an exceedingly long distance. But, I don't think that the School Districts have to be laid out that way.

* * *

[148] CROSS EXAMINATION

BY MR. DONOHOE:

* * *

[151] Q That's all I was trying to get at.

A Yes.

Q All right. Now, Dr. Willie, also in the course of your testimony you talked about a learning experience or learning experiences and life experiences. I take it that you would agree that it is a useful learning experience for middle-class, or if I can use it, I think it's a

sociologist term, the higher socioeconomic people would have the experience of going to school and living with people in the lower socioeconomic groups, is that a correct statement?

A The correct statement would be that people in any class level ought to experience all sorts and conditions of people which characterize the metropolitan area in which they reside.

Q So that works both ways is what you're saying?

A That's right, it works both ways.

Q You also in the course — well, let me finish it. You would agree then it is — assuming a substantial middle-class, if you will, disregard whether they are black or white or Mexican-American, it would be useful for these people, all people to experience each other's experiences in the course of their educational career and that would mean that middle-class people, middle-class experience would be useful to lower socioeconomic [152] class people, is that correct, regardless of race?

A That's correct and vice versa.

Q All right. Let me ask another question on it. I wasn't clear on this. In your testimony were you proposing that assuming whites were to leave the system, I gather it was your testimony that that should not be or that no attention should be paid to that in terms of the desegregation plan, the concept or phenomenon of white flight or out migration of whites should be disregarded?

A My position was that where people live is within the realm of private behavior and is not a matter before the Court.

Q All right. And I believe you distinguished, if I understood you correctly, two forms of private decisions, one would be out migration that would be physically moving and another would be just a decision to go to a private institution?

A That would be in the realm of private decisions.

Q All right. Now, if that phenomenon were to occur after a Court-ordered plan based on certain percentages of blacks, whites and Mexican-Americans and there should be a severe reduction of the white population, just assume with me for a moment, would it be your view that at a subsequent time the plan should be [153] redrawn so as to create this mix of populations?

A That's a conjecture? I cannot respond to because other possibilities are also there, that whites will move back to the city.

Q Well, assume they didn't.

A I can't answer that question on the basis of that assumption.

Q But you're not in a position to testify that you would continually revise the plan at some later date based on the out migration of blacks, Mexican-Americans and whites?

A That's a conjecture that I can't answer. I have no idea what the actual facts might be.

Q So a change in percentage in the proportionate mix of a school population would not be something that would be looked at in that monitoring system that you were talking about in terms of revising the plan?

A It could be a responsibility that the Court would ask the monitoring system to take into consideration.

Q In an effort to make sure that all children experience this we could conceivably find a redrawing of districts at some future time on some reasonable basis?

A Well, the reason why I have difficulty answering [154] is a basic philosophical answer but I think it's helpful because eventually the categories which are now the subject of the suit may become irrelevant, that is race and ethnicity could eventually become an irrelevant category.

Q Because the school becomes a unitary school system?

A Because the school becomes a unitary school system, the population becomes unitary and these categories would no longer be significant categories. That is a possibility.

Q For example, the white population might be reduced to fifteen percent and it would no longer be significant?

A No. The point I am making is being white, being Anglo may essentially become a nonsignificant characteristic of a human being.

Q Now, changing the line of thought, I think I understand, Dr. Willie, in the drafting of a desegregation plan do you believe that the Court should take into consideration such elements as the concept of the city and its planners in dealing with given areas of the city, should that be in any way relevant to the preparation of a desegregation plan?

A Partially.

[155] Q All right. Now, I think you anticipate me, in the area of the city that I am concerned with there is a

serious effort, and this is not in evidence, but assume with me for the moment that there is a serious effort being made by the city with the support of the City Council and with the support, I believe, of most leaders of communities of all races to reverse or somehow handle the problem of what sometimes is called "urban blight", aging of neighborhoods and so forth. Would that in any way affect your thinking about how to set up a desegregation plan? Would that activity in any way affect your thinking?

A It would depend upon whether or not that activity interfered with the constitutional requirement for operating a unitary school system.

Q You would, of course, put a limitation on the law is what you're saying, but let's suppose for a second that the people — well, do you agree with me that the school system is a community? I believe the sociologists say that it is the system that reflects the attitude of the people, where they decide to live in given areas such as the police department and road systems and similar type of systems, would you agree with me?

A Yes, the school system is an institution which [156] is sanctioned by the community to fulfill community goals.

Q Now, suppose that the decision is made by the city planners that the retainage of middle-class people in a given area with the skills they have in government and all kinds of skills is a benefit to making a multi-racial multiclass socioeconomic status area, would you disagree with that as a city planning concept?

A I would not disagree with that so long as that

decision did not encroach upon the rights and prerogatives of people who are not middle-class.

Q I understand. You would also agree that the retainage of some middle-class participation because of their skills they could lend in turn to other groups and of course the other groups contribute to the middle-class, we understand that would be a valid planning goal for the City Planning Department trying to reverse deterioration of a neighborhood.

A My basic belief is that a valid city planning goal is to have diversified communities consisting of a range of social classes and range of races and range of age categories.

Q Now, if an expert in this area were to say that he needed to provide — he needed to assure that the middle-class people do not leave the area if he could you would not, in order to keep their skills in [157] the area, this would not be something that you would object to, leaving aside the constitutional question, is that correct?

A To the extent the middle-class people would contribute to the diversity which is the overriding goal I would not object to it.

Q Maybe I could put it in simple terms. Desegregation through changes in housing patterns is a desirable goal?

A That's a different question than the earlier one.

Q Yes, it is. Okay, let's go back to the one I raised in talking about reversing the problem of neighborhood deterioration. You would agree, I assume, that desegregation or integration of the area with racial balance would be a desirable planning goal?

A Desegregation of the schools would be a desirable planning goal.

Q And also of the housing patterns?

A Maintaining diversity within the residential community is a goal or desirable planning goal that are designed and are interconnected but one is not necessarily subassumed under the other.

Q In drafting or drawing a desegregation plan the drafters could take into consideration the desires [158] of the city, the planning goals of the city in drawing this plan, could they not?

A I should think they could and vice versa.

Q Dr. Willie, there was one more line of questions. Would you agree that there are professionals that disagree with some of your concepts about the handling of or drawing of plans?

A I have not seen any in print, any statement about the drawing of school desegregation plans that disagree with the guidelines I set forth here yesterday.

Q All right. Now, would you agree that there could be some difference of opinion among professionals, objective professionals of the interpretation of those guidelines?

A Yes, that's always a possibility.

Q So you would not take the position that all of the interpretations you have given in your testimony are the only ones that would be presented by experts or professionals?

A No, there are experts probably that might give different interpretations.

Q It wouldn't surprise you if in these proceedings

there are experts that might have some different interpretation?

A It would surprise me if other experts have [159] other interpretations about how to go about drawing a desegregation plan to achieve a unitary school system.

Q Well, let me ask you, you said yesterday that you had done a study of out migration of whites from central cities. I believe you testified that the effect of a desegregation plan or student assignment plan had no bearing on this or did you testify that student assignment was not a factor in out migration?

A I testified that student assignment — the amount of out migration that would be attributed to a school desegregation plan was modest and accounted for less than one-half.

Q My point is that you even agree, do you not, that some out migration may be caused by the fact of a student assignment plan?

A Yes, sir.

Q You also agree, I take it, that some decisions to enter private institutions, which is not necessarily an out migration phenomenon, may occur as a result of a student assignment plan?

A Yes.

Q All right. And would you agree, sir, that the proximity of other school districts to the existing district might have some bearing on this out migration? If you like, turn and look at the map.

[160] A No, I was smiling because what is not an issue in the Court is what might happen to people who eventually realize the benefits and effects from living in a diversified community. I cannot predict.

Q I was making the point that the close proximity of other districts could have an influence on the decisions.

A To the extent that people in the city begin to realize living in a suburban homogeneous white area is a deficient district.

Q This could be an influence upon their decision, isn't that correct?

A I wouldn't wish to offer a judgment on how we might perceive that deficiency with that kind of homogeneous living.

MR. DONOHOE:

Pass the witness.

* * * *

[191] YVONNE EWELL,
called as a witness in behalf of the Plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DEMAREST:

* * * *

[192] Q Could you briefly describe to the Court the positions that you have held? First of all, how long have you been employed in the Dallas Independent School District and what positions have you held?

A I am in my twenty-first year as an employee of the Dallas Independent School District coming here in 1954. I served as an elementary teacher, secondary [193] teacher and elementary school principal and elementary consultant and coordinator for the curriculum development, coordinator for the black studies, coordinator for the ethnic studies, affirmative action and secondary reading.

Q And that covers a period of some twenty-one years?

A Twenty-one years.

Q Would you please describe for the Court your present position and your job duties in that position?

A My responsibilities as Deputy Superintendent for Instructional Services involve many different kinds of things. Firstly, I have the responsibility of coordinating the staff development activities for all of the supervisory personnel in the Dallas Independent School District. I have the responsibility for coordinating the textbook adoption process. I have the responsibility for coordinating the reading effort that we are now approaching in the District and many other kinds of activities as Assistant Superintendent for Curriculum and Instruction in the District.

Q All right. Now, Plaintiff's Exhibit 15 which you have produced for the Court pursuant to subpoena is labeled *A Study of Racial Bias in Social Studies Textbooks*, is that correct?

A That's correct.

[194] Q Would you please explain to the Court how this study came about and the extent of your participation in that study?

A This study came about in 1971 or '72 when the American Jewish Committee was convening study groups all over the United States and Dallas was among those cities that decided that it wanted to examine textbooks currently in use in the school system. A request was made through Dr. Benson and Dr. Estes for me to participate as the official representative of the School District. I did that. We worked the years of '71, 2, 3. I did not finish the work. The committee was reconstituted in '73-'74 and we presented the report to the School Board in the early spring of '74.

Q Could you please explain to the Court the nature of your participation in that study?

A My participation essentially involved presenting to the people involved in the study, there were some fourteen of us lay persons, Protestants, Catholics, Jews, black, white, certain kinds of materials that would raise the consciousness of the people regarding the nature of racism in textual materials and textbooks. In particular give them tools, analytical tools for looking at those materials. And then I did define supplementary materials that would make up for the [195] deficiencies that we find in the materials.

* * * *

[202] Q Were those the major conclusions that your study group reached?

A I would say that they were.

Q Were there any other conclusions that your

group reached that you have not yet shared with the Court?

A Not to my memory at this point.

Q All right. Did your study group make any recommendations to the Dallas Independent School District in terms of remedying any of the problems or deficiencies which were found in the textbooks that are currently being used?

A Yes, following a meeting of the Research and Evaluation Committee and after approval by the Board we have done some things to remedy the situation we find. We have had conferences, of course, with the top administrators in the District, specifically those people in Staff Development, the Director of Personnel, a leader in secondary education and the Affirmative Action office.

We are presently developing a media presentation for training teachers and staff. That presentation will go beyond social studies to include [203] English, language arts curriculum, science and music and other curriculum areas where the same kinds of deficits appear.

We utilize this material to some extent in training student teachers from North Texas State University since Dr. Richard Simms, a professor of North Texas, did participate in the study.

We've had meetings with community groups in order to involve them in understanding the nature of bias in the materials and therefore we ourselves then continue to teach that bias.

We have established further criteria to establish the

validity of the textbooks that we are now adopting in the Dallas Independent School District. About a month ago I conducted a training session involving principals, teachers, parents and students of about two hundred.

An article based on our study has appeared in Phi Delta Cappa, a national publication.

We are planning a spring conference involving a major publishing company so they themselves are conscious of the needs to change.

One of the books that we examined, one of the companies has already asked for our study and is therefore making those changes based upon the study.

[204] We have submitted the report to the State Board of Education and to the Commission of Education.

I think those are some of the most significant things that we have done since the study has been completed.

Q You mentioned something about the same kind of deficits may appear in other curriculum areas.

A Uh-huh.

Q What did you have reference to by that statement?

A Well, I indicated that we focused on social studies materials which we analyzed those books, specifically page by page and identified the kinds of problems which we found. We classified those as co-missions, meaning that there are basic distortions or inaccuracies and omissions. We did not do that for the other kinds of books. For instance, the English books, although we do know if we had the time, we need to do the same thing and I am suggesting that the media presentation will

begin to address the kinds of deficiencies found in other materials.

Q In terms of the effect of this study on the use of the textbooks that were specifically examined by your committee, can you tell the Court whether or not these books are still in use?

[205] A The books are still in use in the District.

* * *

[206] Q All right. One final question, Mrs. Ewell, you stated or I'm not sure if you stated that all of the textbooks that your committee examined are still in use, are they all still in use?

A They are all in use. If I might add to my testimony, I was on the Textbook Committee when we selected these books and there were no other books any better than these. We have no textbooks available that are nonracist so we need to examine any books that we use.

MS. DEMAREST:

We will pass the witness, Your Honor.

MR. WHITHAM:

I know these are difficult cases to organize, Your Honor, and I would simply state that Counsel for the Defendants have not had an opportunity to know that Plaintiff's Exhibit 15 would be introduced. We had asked counsel for the Plaintiffs earlier to provide us with a list of those witnesses, who would be testifying as

alleged experts and a summary of what they would testify to and introduce. And Mrs. Ewell's testimony was omitted from that outline. I simply make that known to the Court so the Court will know we have not had an opportunity to know the nature of Mrs. Ewell's testimony by reason of the discovery process.

* * *

[208] CROSS EXAMINATION

BY MR. WHITHAM:

* * *

[213] Q If a school district elects not to use any of those books, there is no Texas book authorized by law in Texas?

A That is correct.

Q Now, then, did your study then — you then began to describe the method of study, as I understand it, and you wanted to study racial bias in just the social science books for the fifth, sixth and eighth grades pursuant to the request of the Dallas Chapter of the American Jewish Committee, is that right?

A That is correct.

Q And it was limited to that area in the study, is that correct?

A That's correct.

Q Now, at the time the study was requested by the Dallas Chapter of the American Jewish Committee,

what was your role in 1971 with the Dallas Independent School District?

A In 1971 I was working with ethnic studies in the Dallas Independent School District.

Q So it was a part of your responsibility to be reporting to the Superintendent at that time concerning the matter of, perhaps, ethnic bias in textbooks at that time?

A That's right.

[214] Q Had you been given that charge by the Superintendent as part of your duties to report on ethnic bias in textbooks prior to the request of the Dallas Chapter of the American Jewish Committee in 1971?

A I had not been given that charge by the Superintendent, I would consider that within the purview of my responsibility, I had been doing that role.

Q Had you undertaken to perform that responsibility?

A That's right.

Q Had the Superintendent sought to stop you from carrying out that responsibility?

A That's correct.

Q Had he sought to stop you?

A Oh, no, he had not sought to stop me.

Q So you were working on the matter of bias in textbooks for the Dallas Independent School District with the approval of the Superintendent prior to the time the Dallas Chapter of the American Jewish Committee came forward with their request?

A That is correct.

Q Now, let's pass over the details of the study just a little bit and find out what happened to the study. As I understand it, the study that commenced in 1971 was submitted to the Board of Education of the Dallas [215] Independent School District in the spring of 1974, is that correct?

A That is correct.

Q So would it be fair to say that it took approximately three years to engage in the study?

A The first year, as I indicated, we worked and that committee did not finish its work. It was reconstituted about 1973 and that is why we reported in '74.

Q Why did the first committee not finish its work and become reconstituted?

A Well, my assumption would be that the task was more time consuming than many people had anticipated. The task required different kinds of expertise than many people had anticipated. The task as it relates to racism in materials very often is threatening to many people and they could not go on. I would think that those are some of the reasons why it took so long to complete it.

Q When the committee was reconstituted, was it with the support of the Dallas Independent School District and its staff or with the opposition of the Dallas Independent School District and its staff?

A It was with the support of the Dallas Independent School District and its staff.

Q Now, when the report was submitted to the [216] Board of Education, did the Board of Education spend any time with either you or the Dallas Chapter of

the American Jewish Committee upon presentation of the report?

A I did not present the report to the Board of Education.

Q Do you know who did?

A Mr. Cotton who was then the Director of Affirmative Action presented the report to the Board.

Q Did the Board spend — were you present when it was?

A No, I was not present.

Q Do you have any knowledge of the fact that the Board spent considerable time with the report?

A I do understand that the Board spent considerable time in examining and discussing the report.

Q What was your understanding of the amount of that considerable time?

A Well, a portion of the meeting but I don't know how much time.

Q Following the submission of the report did the School District take any action with respect to the state Board of Education's selection of textbooks in the area of bias as covered by the Committee report?

A In the area of selection of textbooks since I had that responsibility I did develop additional [217] criteria for the selection of the textbooks that we shall be adopting next year.

Q Did you on behalf of the Dallas Independent School District submit that report or those recommendations to the State Board of Education?

A Those have not been submitted to the State Board.

Q Do you intend to submit them?

A I'm not sure that we will submit them.

Q What is the purpose then of the material you're working on for submission to the State Board of Education?

A I indicated that this report was submitted to the State Board, the Dallas Chapter's report. The purpose of our study is to identify areas of bias in the materials we use and then to train teachers so that they themselves are aware of those biases and can compensate for that when they are instructing students in the Dallas Independent School District.

Q Do you understand the thrust of your duties and assignments with the Dallas Independent School District is to take the existing books available from the State and assist teaching personnel and others in the School District to be aware of cultural bias and to make aware to them materials to counteract or to [218] better present other ethnic group's positions in this country?

A That is an accurate statement.

Q And have you undertaken to do that in this District?

A I have.

Q Have any of your efforts to accomplish that task been thwarted by the School Superintendent or the Board of Education?

A My efforts have not been thwarted by the School Superintendent nor the Board.

Q Have you had the cooperation of the Board and the School Superintendent in the carrying out of those efforts?

A I have.

Q In your focus on the social science textbooks and your methodology of carrying out your tasks to make them aware of the biases and to counteract those biases, what are some of the things you do in the Dallas Independent School District to show teachers how to deal with the textbook and the alleged bias in the textbook?

A The first thing I try to do is to help teachers identify the biases by again looking at certain kinds of criteria. For example, we have asked them to count the number of pictures in a book to indicate how many of [219] those pictures contain ethnic minorities or people of color. We have asked them to again count the number of pictures and to see if those minorities are in the central position or if they are in the peripheral positions. That's an example of the kind of consciousness that we try to raise. If we then determine that minorities are presented in demeaning roles then we try to help teachers supply supplementary materials that present minorities in a very positive role.

* * *

[230] EDWARD B. CLOUTMAN,
having been produced as a witness at the instance of
the [231] Plaintiffs was duly sworn and testified on his
oath as follows:

DIRECT EXAMINATION

BY MS. DEMAREST:

Q Would you please state your full name for the

Court?

A Edward B. Cloutman.

Q And what is your profession, Mr. Cloutman?

A I practice law.

Q And are you in any way associated with the proceeding which is currently in hearing in this Court?

A Yes, I am.

Q And did you in your capacity as an attorney — what capacity do you serve in this case?

A I'm co-counsel representing the Plaintiffs in this action.

Q In the capacity of your service as co-counsel in this matter did you have occasion to direct the work which was done in terms of preparing what has been labeled as Plaintiff's Exhibit 16 containing two proposals, Plans A and B to desegregate the Dallas Independent School District?

A Yes, I did.

* * *

[240] Q All right. The other question was: Was there an attempt made to completely enclose within each subdistrict all of the student attendance patterns which [241] would flow from elementary to junior high to senior high?

A There was an attempt made to do that. We attempted to, for instance, within A-2 continue the student from elementary attendance zones in A-2 to junior high and senior high zones in A-2. It didn't always work out that way because of the location of the

junior high and senior high facilities, it does not necessarily lend itself to that.

Q Did size of those facilities have any bearing on our ability or our inability to achieve that goal?

A Capacity was also a problem. The existent capacity in the buildings that do exist presented us from continually following that pattern to the secondary schools.

Q If you would, Mr. Cloutman, starting out with Plan A, if you would explain for the Court the assignment patterns and you may want to use the maps to do that. Explain to the Court the assignment patterns and how the Court can tell by using the color code what schools are paired with what schools at the elementary level beginning with the elementary level.

A I think we would first probably want to show the Court which schools under Plan A — elementary schools are considered under that plan naturally integrated or desegregated.

[242] Q What section of Plaintiff's Exhibit 16 would contain that information?

Page nine?

A Yes.

Q Does page nine of Plaintiff's Exhibit 16 show that information?

A Yes, it does, on item thirteen — item eight, excuse me, we list thirteen schools, that under the standard use were residentially integrated.

Q Before getting into this, Mr. Cloutman, Plaintiff's Exhibit 16 is the written description of Plans A and B. Was this exhibit prepared under your direction and supervision?

A Yes, it was.

Q All right. Plaintiff's Exhibit 19, 20, 21 and 22 are maps showing the subdistricts and the pairing and clustering arrangements at the elementary, junior and senior high level for Plan A. Were these exhibits prepared under your direction and supervision?

A That's correct.

Q Plaintiff's Exhibit 23, 24, 25 and 26 are maps showing the subdistricts and the elementary, junior high and senior high pairings and clustering under Plan B. Were these maps prepared under your supervision and direction?

[243] A Yes, they were.

Q Plaintiff's Exhibit 17 is a small scale map of elementary attendance zones which I believe are the same maps that are used for the previous exhibits 19 through 26. Could you please explain to the Court what this map contains in terms of information?

A Plaintiff's Exhibit 17 contains a demographic distribution or a map distribution of the thirteen elementary schools considered under Plan A naturally integrated and they are colored with the felt tip pen the color of purple, lavender.

Q Was this Plaintiff's Exhibit 17 prepared under your direction and supervision?

A Yes, it was.

Q All right. Turning your attention to Plaintiff's Exhibit 18, could you please explain to the Court what Plaintiff's Exhibit 18 contains?

A Plaintiff's Exhibit 18 contains similar information for Plan B. That is elementary schools considered desegregate under or by natural housing patterns.

Q And it is also drawn on a small scale elementary attendance zone map?

A That's correct.

* * *

[258] Q I notice, Mr. Cloutman, that some areas of that map are not colored. Would you explain to the Court what that means?

[259] A Yes. Those areas are the areas considered by the standards we used for Plan B as being naturally integrated and those are indicated on Plaintiff's Exhibit 18, the small map. I'm sorry, we only have one copy of these.

Q And they're also found on page forty-one of Plaintiff's Exhibit 16, are they not?

A That's correct.

For an example, Your Honor, by student assignment again, the students in the noncolored areas would attend their neighborhood schools in that by our standards they were considered to be naturally integrated.

The students in these two green areas are what would be B-1, superimposing the number from Plaintiff's Exhibit 23 to Plaintiff's 24, would be assigned together. And the grade assignment are in Plaintiff's Exhibit 16 for those schools.

Similarly, within each subdistrict, the colors match where the students attend together. If there is no color, the students attend their neighborhood schools.

Junior high, Plan B junior high map is labeled Plaintiff's Exhibit 25 and it again uses a color code to deter-

mine where students will be assigned by junior high attendance zone area. Students here will be [260] assigned — Seagoville students coming from this area as well as this area (indicating). And in some cases the labels are difficult to see because of the glare. But, the word Seagoville appears here and here and here as the school (indicating).

* * *

[295] CROSS EXAMINATION

BY MR. WHITHAM:

* * *

[329] Q What is the one difference?

A Other than the measuring stick we used to determine what a desegregated school was. As Dr. Willie explained this morning, the way he recommends to approach student assignment plans is to consider all schools, to [330] consider they're all available for student assignment purposes and if — and draw subdistricts and if it happens that within subdistricts one need not utilize students in a particular school for a reassignment and it happens to meet the otherwise set out criteria for a desegregated school one might leave it alone. And on that approach we've left those alone.

Q You've just described perhaps the reason for your approach.

A Yes, sir.

Q But whatever the reason for your approach, both your plans leave certain areas of the School District alone as naturally integrated neighborhoods?

A That's correct.

Q Now, the Plaintiffs, under Plan A have not achieved in all instances uniform grade level configuration, have they?

A That is correct.

Q Would you turn to Plaintiff's Exhibit 16 to page twenty-nine, please?

A Yes, sir, I'm there.

MS. DEMAREST:

What did you say? One twenty-nine?

MR. WHITHAM:

Twenty-nine.

* * * *

[354] Q Is there somewhere in the Plaintiffs' Plan B that I can find the number of Anglos that the Plaintiffs [355] advise the Court will be in City Park School, grades K through six?

A You don't find on this — in this document —

Q By "this document" do you mean Plaintiff's Exhibit 16?

A I do, in Plan B, a racial breakdown for the residentially integrated schools. We did not set those out in that they fell within our seventy to thirty percent test.

Our worksheets that went into making up these determinations do show in a fairly exact manner the

number of students by ethnic origin that would attend the residentially integrated schools. We did not list those because they fell within that range. Now, that is all you will find within the four corners of Plaintiff's Exhibit 16.

Q Well, the answer to my question is there's no way the Court can find the racial composition of any school listed in your plan. Let's see if I can find the — do I assume then that anywhere there is not a sixth grade you have —

A Counsel has shown me something in this document that does set out the residentially integrated neighborhoods. It's not in the projected enrollment but in the present enrollment figures. That's on page forty-one.

* * * *

[371] Q I said, did you count him in your figures?

A I don't believe so.

Q So regardless of distance from buildings of any child, in any grade level, unless he lives in a non-contiguous attendance area he's not counted on your figures in Plans A and B?

A For transportation purposes — figures for purposes of desegregation he would not be counted unless he lived in a noncontiguous zone and over two miles from the school.

Q If we were to count transportation figures as computed by the School District, your transportation figures would be considerably higher than as set forth in either Plans A or B, would they not?

A You mean if we calculated every student under these proposal who would be over two miles from the school to which he is assigned, it would be higher, yes, sir.

Q Right. And you understand that each student in the District is being assigned to some building by virtue of a student assignment plan, do you not?

A Oh, yes, sir.

Q Perhaps I missed it elsewhere, but would you refer to page five, under "Senior High Schools — Plan A"?

A Yes, sir.

[372] Q You closed Skyline as an all-purpose high school, did you not?

A Yes, sir.

Q And assigned those students elsewhere?

A Yes, sir.

Q So it serves only as the so-called "Magnet school," correct?

A That would be the proposal, yes, sir.

Q I see also on that page you close Hillcrest High School under Plan A?

A Yes, sir.

Q And those students apparently are assigned to, where? Roosevelt High School?

A Some to Roosevelt. I guess most of them to Roosevelt. I'm not sure whether some of those now live in what would be the Woodrow Wilson attendance zone, but one of the two.

Q Does Plan A contain any provision for the use of Hillcrest High School — the building?

A I don't recall that it does.

Q It just in effect abandons it as a school building —

A I believe that's correct.

Q — under Plan A?

A Under Plan A.

* * * *

[375] Q Tyler and —

A This school here, I think (indicating).

Q This one? Can you identify it for the record?

A I'm not certain I can. We took the furtherestmost northern school in A-7 there — I believe this school and this school (indicating), the names escape me. I think it's Lisbon and Withers.

Q Furtherest northern by location?

A I'm not sure. I think it's the Withers School.

Q That wouldn't be Withers.

A It's the one next to the Dealey zone. I think that one that we made was at least about thirty-four, thirty-five minutes and it took — it was about twenty-two miles.

Q Do you want to state —

A Tyler to Lisbon.

Q Tyler to Lisbon. What route did you take?

A We took a, I believe, east-west major street, I believe Royal Lane, to the Tollway, south to I-35, I-35 to I believe Ledbetter on the southern end, Ledbetter east — I've forgotten the street name. It's the same street that the Veteran's Hospital is on, turning north and then to the school.

Q What time of day?

A It was about noon.

[376] Q What day of the week?

A It was on a Sunday.

Q On a Sunday?

A Yes, sir.

Q Did you do any time and distance — where are the pairings you referred to in your plan that you're going to use Central Expressway?

A I would have to look at the plan. I'm not certain. It would be opposite the ones on the northern and eastern sides of the District. I'm not certain by name right now.

Q How about Budd, Kramer, Dealey and Pershing?

A I'm not sure in any case on a recommended route.

Q But, you haven't done any time and distance studies, north to south, in pairing A-7 under Plan A, using Central Expressway during a weekday at 8:00 o'clock in the morning?

A No.

Q Please turn to page thirty-four of Plaintiffs' Plan B.

A Yes, sir.

Q And I direct your attention to paragraph number four.

A Yes, sir.

[377] Q I quote: "Distance from the majority white areas, capacity of schools, DISD enrollment patterns and generally good physical facilities were factors resulting in South Oak Cliff retaining its present student assignment pattern."

Do you see that?

A Yes, I do.

Q And would there be a similar statement that appeared on page thirty-six with respect to Storey and Zumwalt Junior High Schools retaining their present student assignment patterns?

A That's correct.

Q And somewhere in here, if I can find it — no, it's on page thirty-eight — there is a similar statement with respect to a number of elementary schools in your sub-district B-8 retaining their present enrollment patterns?

A That's correct.

Q Is that not correct?

A That is correct.

Q And we're talking then generally, are we not, about elementary schools, two junior high schools and one high school located in this particular all-black section of the School District, are we not?

A Yes, sir.

[378] Q And, in effect, you're leaving some twelve elementary schools, two junior highs and one high school all-minority in this particular area, are you not, under Plan B?

A That is correct, except that those twelve elementary schools actually serve eight zones.

Q Eight zones. Then under your Plan B you leave in West Dallas one or two all-black or all-minority schools under Plan B, do you not, as well as Dunbar in South Dallas?

A I believe we leave the Allen School and possibly the Lanier.

Q Now, let's go back to the quoted phrase I read to you from page thirty-four; do you recall —

A Yes.

Q — in paragraph four?

A Yes, sir.

Q Do I correctly read that that in Plaintiffs' Plan B, you recognized that distance from the majority white areas within the Dallas Independent School District is set forth as the reason or justification advanced in Plan B for leaving South Oak Cliff High School all-black?

A That's one of the reasons —

Q One of the reasons.

[379] A — offered there.

Q It is a reason offered there by Plaintiffs, distance from white areas; correct?

A One of the reasons.

Q Do you generally accept the School District's delineation on Defendant's Exhibit 2, the yellow shaded area as being a majority white area or the majority white area for scholastic purposes within the Dallas Independent School District?

A Yes. It compares very closely to a map we have been furnished by, I believe, your office.

Q Would that yellow shaded area on Defendant's Exhibit 2 fairly represent majority white areas as you used that term in paragraph four on page thirty-four of Plaintiffs' Plan B?

A Yes.

Q All right. The next thing you took into count under Plaintiffs' Plan B as justification for leaving certain all-black schools was the capacity of schools, was it not?

A Yes.

Q The next, or third thing you advanced to the Court as justification for all-black schools was DISD enrollment patterns, was it not?

A Yes, sir.

[380] Q What did you have reference to by the phrase, "DISD enrollment patterns"?

A Patterns both for numbers and for race for those schools, as we can determine them from the various reports, the Hinds County Reports, filed by the District.

Q Well, by "Enrollment patterns" did you mean the numbers of Mexican-American students, the numbers of black students and the numbers of white students?

A Yes.

Q By "Enrollment patterns" did you mean that some years ago there were more Anglo students than there now are?

A I'm not sure that was one of the considerations. The enrollment patterns as we view them in this litigation have always been predominantly minority in that area from the time frame I am speaking of, 1970 on.

Q Well, by "DISD enrollment patterns," then, do you at least mean a recognition on the Plaintiffs' part of a rather constant growing school age population in the area served by those schools?

A Yes, that's one thing.

Q By "Enrollment patterns" do you at least — do Plaintiffs at least take into account a steadily decreasing enrollment pattern of Anglo students in the yellow shaded area on Defendant's Exhibit 2?

[381] A No, that's not what we meant. The absence of the Anglo growth in that area and the potential for it — the area known as "B-8."

Q The fourth reason you advance to the Court for leaving all-black schools within the Dallas Independent School District, as represented by the quotation taken from page thirty-four, paragraph four, was the generally good physical facilities that existed. Were you referring to generally good physical facilities in the area you left the all-black schools in, Oak Cliff?

A Yes. And I'm sure there are exceptions to the generally good facilities, but by our inspection and by review of the statistical information we have on each school building they looked to be generally newer and in reasonably good shape for occupancy.

Q So you're recognizing and telling the Court that at least in the Dallas Independent School District, in that predominantly black area at least, there are good physical facilities?

A There are some, yes. I'm sure they are — they compare, for instance, better physically than some of the all-black schools do in South Dallas.

THE COURT: Let's take the morning recess. Fifteen minutes.

(morning recess.)

[382] THE WITNESS:

Counsel, if I might, I would like to correct an answer I gave you prior to the recess when you asked about the schools we had traveled. And the school name in North Dallas was Withers Elementary. Withers.

Q (By Mr. Whitham) Withers to whom?

A Lisbon.

Q Withers to Lisbon?

A Yes, sir, I'm sorry.

Q But, we still did it about noon on Sunday?

A Yes, sir. We were trying to measure the distance. It's the same on Sunday as it is on Monday I think.

Q Under your Plan B: On page thirty-four, under Plan B you again close Skyline's attendance zone, do you not, as you did in Plan A?

A Yes, sir.

Q But, in addition to that high school building closed, you also closed Hillcrest, Thomas Jefferson and Seagoville as high school buildings, do you not?

A They are — their use is changed, that's correct from a high school to —

Q You closed them as high schools?

A Yes. They will no longer be high schools.

Q And would it be fair to say that if you closed [383] Skyline's attendance zone, Hillcrest's attendance zone, Thomas Jefferson's attendance zone and Seagoville High School's attendance zone you would be closing schools located virtually in the predominantly Anglo area of the School District and thus making more Anglo students available for being transported into minority area high schools?

A One, Hillcrest and Thomas Jefferson are in the predominantly Anglo area; I guess Skyline is by its attendance pattern. By closing those high schools, obviously, you assign those students to other schools, yes, sir.

Q And under Plaintiffs' Plan B on page thirty-six you closed Edison as a junior high school, Holmes as a junior high school, Hulcy as a junior high school and Rylie as a junior high school; correct?

A No, sir. We use part of Edison for a junior high and part for a magnet school.

Q But, you then do close Holmes, Hulcy and Rylie as junior high schools?

A That's correct.

Q Now, I notice also that with respect to Edison, Holmes, Hulcy and Rylie, under Plaintiffs' Plan B you make some suggestion of their use as a magnet school; do you not?

[384] A Yes, sir.

* * *

[405] CROSS EXAMINATION

BY MR. BRYANT:

* * *

[406] Q What I would like to ask you is several questions regarding the considerations that you viewed as important in drawing up the plan.

First of all, I would like to ask you if you considered residential patterns of integration to any extent?

A Yes, sir. We have indicated in both Plan A and B that certain areas were left intact if they met a ratio of not having more than seventy percent of any one race.

Q All right. But, weren't those figures based upon the enrollment in the schools?

A Yes, sir, that's correct.

Q You don't have any studies reflecting the actual residential patterns of integration in a particular area?

A Not for this lawsuit, I do not.

Q Did you consider to any extent the emerging residential patterns?

A Emerging —

Q Emerging residential patterns or trends, projected racial breakdowns that will probably occur in the future?

A We did do some consideration of student [407] enrollment patterns that were emerging or appeared to be going one particular way, but not for the general populous.

Q To what extent did you consider the emerging student enrollment racial breakdowns?

A Well, in particular, a portion of B dealt with South Oak Cliff and considered the ever-increasing number of minority children moving into that area. That's one consideration.

Q Well, can you tell me specifically how that consideration is reflected in this plan?

A Yes. That would form part of the basis for the proposal in Plan B to leave the District B-8 intact, attending their resident neighborhood schools.

Q What did you use to — explain for me the way in which you devised this projection.

A Well, that wasn't much of a projection. Actually, we were looking backwards over what the enrollment

patterns had been and assuming there would not be much difference in the next year or two in the increase in that area.

Q Well, that's basically in all minority areas, is it not?

A Yes, sir.

Q So you didn't have to decide if there was going [408] to be an increase in black enrollment or an increase in white enrollment, you just assumed it would stay the same?

A We were trying to determine whether there was any possibility of black enrollment tapering off or whether there was any possibility of Anglo enrollment in the future, and we determined it was very unlikely.

Q What factors did you consider as you tried to make that determination?

A Just enrollment patterns in the past — the past five or six years by race.

Q You had no particular formula that you followed?

A Not a particular formula, no, sir.

Q Did you consider to any extent the stability of any area of town? And by, "Stability," I would mean several factors should be taken into account: The real estate market, the current movements now taking place in the area, the present attitude of the residents of an area about the future of the area of town in which they live?

A I'm not sure that formed much of a basis, except insofar as we looked at student assignment patterns to

try to determine whether by treating them certain ways one might stabilize an integrated school setting or one might not stabilize that by doing one thing [409] or another.

* * * *

Q Okay. My initial question, though, was about stability of various areas of town, and I asked you whether or not you considered stability as you drew up your plan. And your answer to me, I believe, was that you considered it to the extent that you left the integrated areas alone. Now, in what way in your view does further integration of an area which is already partially integrated [410] contribute to instability of that area?

A I don't assume and I don't know that it does contribute to instability. We felt that if what appeared to be residentially integrated student assignment patterns were present within the realm of a seventy to thirty percent range then no further integration needed be occasioned by our proposals and those would be sufficient.

Q Well, then, if I asked the question again, to what extent did you consider stability of various areas in drawing up your plan, the answer would have to be that you didn't consider stability, wouldn't it?

A Not as a concept itself, no, sir.

Q All right. You didn't consider stability?

A Not of a neighborhood. If a school appeared to be naturally integrated we felt like that was enough for our purposes, we need not move students around in that area because the schools were already integrated. We didn't do any studies of neighborhood stability, as such, at all.

Q Was there a reason why you did not consider neighborhood stability in drawing up these plans?

A The only reason I can tell you is that we were interested in student enrollment patterns only in drawing the plan.

* * *

[412] CROSS EXAMINATION

BY MR. DONOHOE:

* * *

[426] Q Yes, sir.

A No, I don't believe we have done any of those.

Q All right. Let's assume all of these grade schools: Oran Roberts, Robert E. Lee, Stonewall Jackson, Bayles, Sanger, Lakewood, Mount Auburn or Lipscomb?

A I don't believe we ran any of those in particular under either plan.

Q Mr. Cloutman, you were present during Dr. Willie's testimony earlier; is that correct?

A Yes, sir, I was.

Q And you heard him testify that the goals of urban planning, rehabilitation, efforts to rehabilitate, renew inner cities should be accommodated, if at all possible; I believe he stated, could be accommodated under a desegregation plan provided that it did not result in unconstitutional actions in connection with the desegregation of schools. Would that be a fair summary of his testimony?

A If I recall what he said, that could be a laudable goal of urban planning if it was not at the expense of student integration.

Q But, he did indicate that the School District's actions and the actions of the city or the urban planners did interact, did he not?

A Yes, he did.

[427] Q And I believe he also testified, did he not, that these interactions should be taken into account so long as they did not interfere with unconstitutional — or, did not cause unconstitutional segregation of the school system?

A He used words something to that effect, yes, sir.

Q You would agree that's something like what he said?

A Yes, sir.

Q All right. Would you agree then that any desegregation plan adopted by this Court could well take those factors into account, as far as your clients and yourself are concerned?

A Provided it would not be at the expense of student desegregation, yes, sir.

MR. DONOHOE:

All right. That's all. Thank you.

* * *

TRANSCRIPT OF PROCEEDINGS
VOLUME IV

(Number and Title Omitted)

Filed: August 9, 1976

[2] DR. CHARLES HUNTER,
(Witness Sworn by the Court)

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

* * *

[6] Q Okay. Dr. Hunter, the NAACP had submitted for consideration by the Court a plan referred to as the NAACP Plan; is that correct, sir?

A Correct.

Q And I'll show you what has been marked as NAACP's Exhibit number 2, which is the proposed plan of desegregation submitted to this Court on behalf of the NAACP. Are you familiar with that proposed plan, Dr. Hunter?

A Yes, I am.

Q Okay. Would you state whether or not — would you state whether or not you know who drew that plan?

A Yes.

Q Who drew it, Dr. Hunter?

A I did primarily.

Q Okay. You said "primarily". Did someone else work with you in the drawing of the NAACP's Exhibit number 2, the proposed plan?

A No.

MR. CUNNINGHAM:

Your Honor, we would at this time offer as NAACP's Exhibit number 2 the proposed plan for desegregation for DISD prepared by Dr. Hunter as our Exhibit number 2.

* * *

[14] Q Would you state to the Court what those goals were?

[15] A Yes. The goals of the plan as set forth were: "1. To make use of the positive elements that can be found in naturally integrated neighborhoods and to enhance opportunities for persons in other neighborhoods in the development of programs which will provide quality education for all."

And: "2. To enhance educational opportunities provided in inner city schools by the development of a superior educational program in each of the schools and to provide physical facilities of a quality and quantity commensurate with the needs."

And: "3. To develop a plan of education that recognizes the diversity in populations and which will

utilize these diversities to impact upon the integrated whole for the entire District, which will include the upgrading and improvement of education in every school."

And: "4. To develop a program of community involvement whereby the decision-making body in the school system will have regular input, both system-wide and in each local school."

Q Okay. Dr. Hunter, you said, to make use of the positive elements that can be found in naturally integrated neighborhoods and to enhance opportunities for persons in those neighborhoods. Would you explain to the Court what you had in mind when you developed this goal?

[16] A Yes. One of the aspects of the rationale was that the desegregation would result in integration of not only race but of also socioeconomic status groups. This I think is important.

Now, integrated neighborhoods have the advantage of having a mix that is superior to those neighborhoods that are not integrated. Heterogeneous neighborhoods tend to have an advantage over homogeneous neighborhoods in many ways. Now, that's a positive element.

In addition to that, there are positive elements in the fact that the schools are already — school populations are already desegregated, too, so that there is no reason to disturb them if they're already desegregated. These schools, then, should not be disturbed in order to desegregate other schools.

Q Dr. Hunter, a second goal you outlined was the

enhancement of educational opportunities in inner city schools. Would you elaborate on that and what you propose here?

A Yes. The inner city schools for the most part have older facilities; that's one thing. But, they also tend to have — tend to serve populations with greater density and, therefore, tend to be larger in size. They also have historically been the ones that tend to be more neglected among the schools. The newer school buildings [17] generally ring the periphery of the city, you know, as you go out. The inner city schools tend to be neglected more often.

* * * *

[18] Q Okay. Would you advise the Court what the [19] guidelines were, or what would be your first guideline?

A Well, the first guideline actually was to develop a fair and reasonably stable plan by taking note that every school should have a racial balance comparable to the racial balance in the District, which will not deviate more than ten percent up or down; and to not transport students out of a neighborhood which is already integrated. That is, one having the racial balance referred to above.

Q Now, Dr. Hunter, before going further with your guidelines, after you had developed your rationale, your goals and you had some idea of your guidelines did you have information with respect to the enrollment or data figures; did you have any of this information?

A We had information about enrollment, etc., and particularly the percentages of racial groups in each school. But, this plan did not — or, at least I did not see the necessity to have accurate totals in this plan. We saw the need to devise a plan — a model, because ultimately the responsibility for assigning the students — physically assigning the students is going to be the administration's anyway. And when we devise plans, it is devised at one point in time to be implemented at another point in time and the figures we have available at that time are not the figures that will be used at the later time.

* * *

[102] CROSS EXAMINATION

BY MR. DONOHUE:

* * *

[106] Q All right sir. And all of the other white markers are also a breakdown of the racial mix or ethnic mix in a particular elementary zone, is that right, sir?

A That is correct.

THE COURT:

In percentages, isn't it?

THE WITNESS:

In percentages, right.

Q All right. Now, Dr. Hunter, could you tell me whether you would agree as a professional educator that obtaining racial balance through changes in hous-

ing patterns would be a preferable method to the transportation of students if it were possible?

A Yes.

Q And that's reflected in your plan by the fact that you treated several schools as naturally integrated, is that correct?

A Yes.

Q All right. Now, assume with me, Dr. Hunter, some facts not in evidence.

MR. CUNNINGHAM:

Your Honor, we would object to him assuming something that's not in evidence.

MR. DONOHUE:

Well, we'll offer this in evidence at a later time, Your Honor.

THE COURT:

Well, I'll let you submit a hypothetical question.

MR. DONOHUE:

I'll connect it later.

[107] THE COURT:

Predicated, of course, on the fact that you expect to prove the basis for this hypothetical question.

MR. DONOHUE:

We understand, Your Honor.

Q Assume with us that the City of Dallas through its Planning Department and its Department of Urban

Rehabilitation is attempting to develop a strategy for the preservation of inner city neighborhoods for the arresting of decline of inner city neighborhoods and for the stabilizing of the — what would have the effect of being the racial and ethnic balance in certain inner city neighborhoods. Would you agree that this plan should take that strategy into account to the extent that your plan would affect their strategy? Should there be any connection, any consideration given to the city's strategy as I've defined it?

A Insofar as the variables of community concerns are taken into account, I would say that also should be a consideration.

Q Also. Could I go further and say that if a strategy is being developed which is designed to promote racial balance or would have that effect and would also be a public policy of another governmental unit such as the City of Dallas, that this should be accommodated in your plan?

MR. CUNNINGHAM:

Your Honor, we will object [108] to it first of all because it is an assumption. It's speculative. First, it's based on an erroneous assumption because I think — I know that there is no such plan by the Department of Urban Development to develop a racial balance in the inner city and the reason I know it is because I'm a member of the City Planning Commission and I know there is no such policy.

MR. DONOHUE:

Well, I used the words, "it would have that effect," Your Honor.

THE COURT:

Well, I'll let it go to the weight of it.

Q Would you answer the question, Dr. Hunter?

A I've forgotten the question.

Q All right. Dr. Hunter, maybe the question wasn't particularly well phrased. Would you agree that to the extent that there are policies of another governmental unit which affects geographical areas within the Dallas Independent School District, those geographical areas being generally referred to as the inner city, which policies might have the effect or designed or would have the effect of promoting racial balance, would those policies — should those policies be considered in the exact formulation of a plan of desegregation for the Dallas Independent School District?

A Such plans should be considered insofar as they do [109] not restrict the achievement of the ends of developing a plan of desegregation.

Q Right. In other words, you're interested in school desegregation?

A Right.

Q But if the plan could be designed in such a way so that it would not interfere with the policies I've just outlined should that plan be designed in that fashion?

A I would think so.

MR. DONOHUE:

Thank you, Dr. Hunter.

CROSS EXAMINATION

BY MR. BRYANT:

Q Dr. Hunter, I just have two questions for you.

Did you at any time consider the residential character or residential racial breakdown of the various areas in the Dallas Independent School District as you were drawing up your plan?

A Yes.

Q Okay. In what respect is it reflected in your plan?

A The plan calls for the consideration of those naturally integrated neighborhoods by housing patterns to the extent that they would also result in desegregated school bodies, that they should be exempted from the pairing.

* * *

[118] JOSIAH CALVIN HALL, JR.,
having been produced as a witness at the instance of
the Court was duly sworn and testified on his oath as
follows:

DIRECT EXAMINATION

[119] BY THE COURT:

* * *

[123] Q Does anybody —

THE COURT:

Are there numbers on it?

MR. WHITHAM:

Yes sir, they're up in the far right corner. They've been numbered 1 through 4.

THE COURT:

Dr. Hall Exhibits 1 —

MS. DEMAREST:

Dr. Hall's 1 —

THE COURT:

Dr. Hall's Exhibits 1, 2, 3 and 4, is that correct?

MS. DEMAREST:

Right.

THE COURT:

All right, go ahead, Dr. Hall.

A (Continuing) The middle school map, Exhibit 2;
the junior high school map, Exhibit 3; the senior high
school map, Exhibit 4; and the plan itself — now, this
was not given a number but I think it ought to be Ex-
hibit 5.

THE COURT:

Let it be Exhibit 5. Does everyone have a copy of it?

MR. WHITHAM:

We have a copy and would this be an appropriate time
if the Court's about to consider its admission for me to
go through one of my little drills?

* * *

[128] Q (Continuing by the Court) Dr. Hall, would you give us the benefit of your plan?

[129] A In the development of this plan guidelines were established and utilized as follows:

Now, Your Honor, we have numbered these pages, the first three cover pages A, B, and C and then page 1 doesn't have a number on it, so if you number that 1 then it would be simpler to follow my presentation.

Guideline one: page A paragraph two. Assign kindergarten and first grade pupils to facilities near their homes without reference to ethnic groups.

Pupils in these grades were assigned to schools which pupils in these grades presently attend except where there is a change in boundary lines between Stemmons and Hall, between Bud and Mills, between Travis and Booker T. Washington and between Lakewood and Lee to provide for the regular pupils at Stonewall Jackson or the school is discontinued as a facility for regular pupils, Juarez, Douglas and Stonewall Jackson. Incidentally, Stonewall Jackson has special ed pupils and they would continue to have.

Guideline two: page B item three. Assign pupils in other grades so that no school will have more than approximately 75% nor less than approximately 30% of combined minority groups.

Guideline three: page C item four. Insofar as possible where individual schools or adjacent schools by their racial composition meet the approximately 75-30 ratio [130] of guideline two leave them in tact or combine them.

There are fifty-three centers in this group listed in Exhibit 5 on pages 14 to 19. The elementary schools are

shown in red color on Exhibit 1. That's the map for the elementary schools, Exhibit 1 and the red color deals with this group.

All centers fully meet the 75-30 ratio except seven considered as approximately meeting the 75-30 guideline.

And those seven are Arcadia Park Elementary which has 25.6% combined minority group; David G. Burnett, 26 and 1/10; Tom W. Field Elementary, 24 and 9/10; John Ireland Elementary, 28 and 7/10; Leslie Stemmons Elementary, 25 and 8/10; Mark Twain Elementary, 81 and 5/10; D. A. Hulcy Junior High which is on Exhibit 3, 81 and 4/10.

Guideline four: page C item 5. Assignment of pupils to schools should be done in such manner that if possible pupils will spend a maximum of thirty minutes in being transported. Three centers listed on pages 14 to 18 were initially included in this group as being too far to be transported within thirty minutes. They are Central Elementary with a combined minority of 15.2, Seagoville Elementary with a combined minority of 16.4, and Seagoville Junior Senior with a combined minority of 16.4.

A number of these fifty-six centers do have no or little representation from one of the minority groups.

* * * *

[295]

PROCEEDINGS

(2:00 P.M. February 19, 1976)

THE COURT:

I think I had originally designated this as a pre-trial and those matters are generally held, as you know, in the office, but I decided that there was a lot of interest in this matter as well as the fact that there may be some things that people, parties, the attorneys, want on the record anyhow and so I decided we ought to come in here. We had left the matter that I asked the attorneys to consult with their clients in regard to the Dallas Alliance Task Force plan that was submitted to the Court last Monday night and I had, as has been stated, asked the parties through their attorneys to consult about the possibility of an agreed order in this case and had [296] stated that the Dallas Alliance Plan, in the light of who it was on that Task Force, and I think it's a misnomer to call it the Dallas Alliance Plan, it was the plan submitted by that Task Force or its Task Force, but I felt that it might add some new dimension to any discussions as to a possible solution to this matter and I had asked the attorneys to report back to the Court this afternoon and we would go from there.

Is there anybody who wants to report to the Court? I asked Mr. Whitham, Mr. Martin or the Plaintiffs or anyone else who wants to —

MR. WHITHAM:

I suppose in view of what has happened that I go first and bear the brunt, so here I am. Judge, the Board of Education reviewed the Dallas Alliance proposal as thoroughly as possible, given the amount of time available to the administrative staff and attorneys. The Board thoughtfully considered all of the proposal's

provisions. A majority of the Board Members have expressed themselves as electing to stand on the School Board's plan and continue to assert it in the Courts. The Board indicated its willingness for its attorneys to continue to negotiate with the parties and, of course, the Board's attorneys [297] will continue to do so. And, as a personal statement from this attorney and also Mr. Martin's standpoint, we do pursue those matters with the other parties while this case is going on — we assure you that's not being ignored.

THE COURT:

Well, I do know that the attorneys have approached this matter sincerely and in good faith and likewise seek a solution to a problem that has many facets to it and is not easy. And I will repeat that I don't ask the parties to negotiate for my benefit because, though, I sometimes have wondered about it, deciding these cases is what I hired out for and I will continue.

MR. WHITHAM:

You will recall because I recall the strain of that last day in 1971, and I believe I made the comment then that the lawyers' role was easy in that all we had to do was to advocate, you had the hard job, you had to decide, and the lawyers here still recognize that.

THE COURT:

Well, I appreciate the efforts of the lawyers, I repeat that, I think I said it to you Friday, but I will say it to you publicly.

Thank you, Mr. Whitham.
Mr. Cloutman.

[298] MR. CLOUTMAN:

Your Honor, we have, as the attorneys for the Plaintiffs, gone through as best we could the proposals by the Dallas Alliance and we have consulted with representative members of the Plaintiffs and the Plaintiffs' class and I would like, if I might, Your Honor, to address myself categorically to the proposal so that it's clear how our posture is with respect to the Dallas Alliance proposal.

Firstly, Your Honor, not firstly — firstly, listed in the plan is the item of pupil assignment. I would like to take that up last with the Court.

Now, their recommendations two through six in their proposal have to do with other matters and respectfully, Your Honor, we submit that those are boiled down in our estimation to the items of education and staffing, accountability, and finally the pupil assignment proposal itself. Now, I don't submit that is how they would characterize them, but that is how we have catalogued them for our purposes.

The educational proposals, the staffing proposals, the accounting proposals, are very similar to those already advocated by the Plaintiffs. While the terms may vary, I believe that the Court [299] will recall that most of those concepts have been supported by testimony already by Plaintiffs and Plaintiffs' various witnesses.

The concept of facilities was testified to at length in an examination of the Chase report which this also relies upon to some degree. The magnet school concept has been dealt with by almost every plan so far propos-

ed. For that reason we believe that the testimony is in the record as of this date as to the advisability of such concepts.

I believe the testimony offered so far is even more specific in recommendations than this proposal in fleshing that out, so to that extent we have no quarrel.

We have in particular an accounting system proposed here almost identical to the one Dr. McDaniel testified to. We submit that's in the record for the Court's consideration.

Turning to the student assignment, it's difficult for us, without access to an on-going pupil accounting system, to know exactly how that would work at this stage or even next fall, given the knowledge and our figures. In working with our figures in proposing our own student assignment [300] plans I find or we find number one, that it's very difficult to tell exactly where the students would go to school and in what number, but secondly, it appears to us, and this is simply that of appearance, that some of the proposed fourth thru eighth assignments might even be impossible because of capacity problems occasioned in those areas in that we tried similar arrangements. I am not suggesting that is the case because I don't have the numbers in front of me to compare.

Secondly, with regard to the student assignment, the proposal, as our testimony has urged on the Court, does not go far enough, particularly into the early grades and to that extent the Plaintiffs have issue with the student assignment plan. I don't mean to say we reject the efforts of the citizens to aid the Court or assist in the process that we are now about, but rather in

dealing with as best we could the particulars of the plan those would be our comments and that the student assignment plan in particular is not the kind of plan we would urge upon the Court for the position of the Plaintiffs.

We do believe there is enough evidence in the record as to all facets of the other mentioned [301] items in their proposal for the Court to have some guidance from expert witnesses who have been brought before the Court and to that extent we feel that the evidence has been submitted to allow the Court to know whether these concepts are adoptable or not.

I believe we should, in our opinion, proceed with the case and continue whatever talks the lawyers are about and I believe forthwith continue the hearings.

Thank you, Your Honor.

THE COURT:

All right. Thank you, Mr. Cloutman.

MR. CUNNINGHAM:

May it please the Court, I have reviewed the plan and the map and I made copies of the plan available to the officers of my client, the NAACP, they have met and had an extensive review of the plan. After having had it and having also seen a copy of it in the paper, we had an extended discussion of the plan with the map where I explained as best I understood it and as best we could we hashed it out. At the outset we think aside from the student assignment plan, taking the student assignment plan and laying that aside for the time being, we

think [302] the plan has merit as Mr. Cloutman mentioned as instructional material, instruction, with respect to staffing, with respect to accountability, with respect to a monitoring system, with respect to magnet schools. We think all of these are good. This is some of the things that are advocated as the Plaintiffs have advocated. When we look at the student assignment plan we have some doubt, first of all, as to the legality of waiting to attempt to achieve this by September 1, 1979, first of all, to achieve a unitary school system. It is our contention and it is the belief of my clients that DISD should be a unitary school system now and particularly when school opens on September 1, 1976. So we think that the law is clear that DISD should operate a unitary school system. Passing the three year delay we are faced immediately with the problem of the Fifth District, which is left 98% black, 2% brown for grades four through eight, and we can see no justification and we feel and my opinion is that, and this is strictly lawyer's opinion that in face of the Fifth Circuit's mandate that it is not valid, that it's not legal to leave 98% of one district out of five totally black or totally minority. [303] Second, we think that when or after we get past this fifth district, which is totally minority, we can see no justification, no basis whatsoever, no rationale contained in the plan or the exhibits attached to it which justifies nine through twelve remaining at home. The members of the NAACP can see justification possibly for K through three because we are dealing with young children, the first time in school. I have talked with some teachers and they explained that these kids may lose their or may have problems being there the first

time but for nine through twelve there is no justification that we can see. We have not had their benefit or reasoning of why they did it, maybe it will come out through one of their witnesses. But as the student assignment plan stands now, the NAACP cannot adopt it because of the reasons I have stated.

Thank you.

THE COURT:

Thank you, Mr. Cunningham.

THE COURT:

Any of the intervenors?

MR. MOW:

Your Honor, I will make any response brief on behalf of the Curry intervenors. We spent a good deal of the time yesterday evening going over the plan and basically we feel like [304] there is insufficient detail in a number of particulars to respond affirmatively or negatively. A good deal of that plan depends on what the School District and the school administration can do. We don't feel like we are qualified to make those decisions and particularly with regard to the student assignment until we know how and why and where people go, it's not up to us to say, but we will reserve judgment on this until we have more detail on it, but I would like to make the comment that on the staffing proposals, they appear to be impracticable.

THE COURT:

All right.

MR. FROST:

Your Honor, if we may, Mr. Bryant and I will speak separately on this. I have reviewed this with my clients in the case, I represent the people from western Oak Cliff, basically. We like the concept of the subdistricts, that is, the relatively compact subdistricts, and not involving people from different parts of town. We have serious reservations about the plan, number one, on the basis that we don't, as Mr. Mow stated, we don't feel we have sufficient specifics to make a totally intelligent judgment on the plan.

[305] Number Two, the people I represent are very interested in having a final resolution to this case. Their area has suffered greatly under the uncertainty in the last four years and we are seriously concerned because the plan provides less integration at the high school level than the '71 Court Order and there is serious question about the plan being upheld on appeal. We would be interested in this plan if high school districts could be incorporated.

THE COURT:

All right.

MR. BRYANT:

Our clients, from the Pleasant Grove area, feel the concept in the Alliance proposal is basically acceptable. We do have concerns, as Mr. Mow said, there is insufficient detail for us to make a decision on how we feel about the way in which it might be implemented. However, my clients feel that it is a concept that should be worked with and one that with further refinement,

hopefully would lead to fruition and we will continue working with Your Honor and the parties and the Court in attempting to make something workable from it.

THE COURT:

All right. Mr. Donohoe.

MR. DONOHOE:

Your Honor, I, too, have reviewed [306] this plan with our clients and we find that in reviewing the outline, this approach that was presented to the Court, that we are not at this point in a position to comment or take a stand for or against the plan. However, Judge, I would like to make a comment or two which I think are in the context of what we are here about today. No offense to Dr. Estes, but I have heard it said that any bureaucrat, given time and opportunity, can ruin a good idea. I think the same thing could be said about lawyers. I think the Court is here faced with for the first time a plan that apparently has received some support from some members of the minority community as well as some members of the Anglo community. I think the Court has asked the attorneys and the parties to try to be helpful in resolving the controversies that are here today. I feel at times in the course of this litigation, I am a latecomer to the litigation, one of the most recent intervenors, that the reference to the principal parties in this case, the School District and the Class, represented by the Plaintiffs, sometimes leaves the impression that some of the other issues brought into this

case are not of really serious [307] importance, to the order the Court is being asked to make here. I am here to say, and I think the Court understands, that the issue that the clients that I represent are bringing before the Court, the ideas, the evidence, while not directly associated with education are going to be issues that are going to be affected by whatever the Court enters in this case. I am talking about the institution of the City Planning, I am talking about hospitals, I am talking about all forms of city service. Now, it seems to me in that context in an order that is going to be so pervasive throughout our society, our city, it is important that we take an approach that has the possibility of assembling support from all segments of the community.

Now, this new idea that has been presented to the Court involves risk for every party. I am not certain that it doesn't involve risk from my clients more than it does for some of the others. However, I think that it would be wise to go forward and explore this approach and try to determine if there is any feasibility or possibility to it, Your Honor. I may be the first one down here opposing it once it's fleshed out [308] and once it's worked out to see what it really means. But I would really favor, if it please the Court, that there be an effort to flesh this out to determine its feasibility. I also favor, Your Honor, in order to determine the support for the plan at the outset that there be some effort made to bring those who designed this plan before the Court and to make a record as to whether or not they do, in fact, support it, and what they mean by this very broad outline that was presented to us on Monday.

Thank you.

THE COURT:

I believe that's all of the parties.

Well, of course, we had, I believe that I told the attorneys the other day in the office, that I would call on the Task Force to provide a witness in support of or the reasons for the plan. I had interrupted the School District's rebuttal or at least hadn't even permitted it to start. I had told the Curry intervenors that their presentation would be delayed pending examination of the Task Force plan. I have in mind at this time or, by the way, before I forget it, there have been filed with the Court some [309] objections to the Dallas Alliance plan by, as you know, I believe by Mr. Hernandez and also by Mr. Rutledge. Now, I don't know that the attorneys have had copies of that, but I have them in the office. We have made Xerox copies so everybody can have them. There are other matters that have been submitted to the Court and I want the parties and their attorneys to have the benefit of it and they are all in there and you can pick that up as soon as we get through here or take a recess.

I will say this further about the Task Force, the question as to the nature of their status in this case, as you know, I had asked for, as I said I wanted something from these people who were willing to undertake the task of coming up with some sort of a plan that would represent a consensus of a cross section of this community and what resulted was the Task Force of seven blacks, seven browns, and seven whites.

Now, as far as I am concerned, in order to make it official, or give some official status, I am going to pro-

ceed and I will enter an order to the effect that they come in as or they are brought in by the Court as *amicus curiae*. I would like for the parties to state how they wish [310] to proceed. It would be my suggestion right at this moment that we go ahead at this time with the School District's rebuttal if they are ready to proceed, and if they want to proceed at this time, and that we realign and fix another time for the witnesses that the Curry intervenors propose to bring in and the Plaintiffs' rebuttal to that which I understand they wish to present.

Now, I had promised to get somebody from the Dallas Alliance and I will try to arrange that, but I am asking more for the convenience of the parties at this time.

MR. WHITHAM:

I suppose the principal question is what happens, does the School District go forward with rebuttal?

THE COURT:

Yes.

MR. WHITHAM:

The rebuttal that was intended was what I would call portion rebuttal in the sense of data about plans before the Court, therefore, if Dallas Alliance is to be a plan, it might fracture it out some to have to come back into a separate one just on that. What I am about to say may be a very delicate matter with the *amicus curiae* arrangement the Court has in mind, but perhaps in the

interest of what I see going on [311] or at least read of, let me perhaps ask rhetorical questions and make observations. I recognize I am in a sensitive area. If I read the news accounts right there are probably what might be thought of as dissents from certain black Task Force members, certain Mexican-American Task Force, one Anglo member. The question might occur has this group of dedicated citizens done at this point all that they can for the Court and the community and in view of this dissent that seems to be coming up, is the Task Force itself exhibiting some degree of divisiveness and pressures that those of us that live with it certainly know about. Therefore, the thought occurs, and certainly in view of the Plaintiffs' position that much of it is contention and would the community be best served if these dedicated citizens were simply commended for their efforts and the community be not put further through the strain that is inevitably to occur as each party that has concerns about the Dallas Alliance undertakes to fracture it out.

The Court is experienced enough a trial lawyer when you practiced law to have a vision of what is about to happen. Now, those were dedicated [312] people. If they are brought in or if the Court is to pursue their plan it makes them just another party, in effect, here, because the Court, of course, is lawyer enough to know that the game gets played that way. Therefore, I have taken a long way around, Judge, to say, would we be better off not to have just one more student assignment plan, apparently this satisfies no one by agreement, it's a repeat of things that Plaintiffs have already

put on. I say these things knowing full well of the Court's commitment to the business community and of these people and I hope the Court understands what I see coming and couldn't we spare the city that? I think it will be more harmful in the long run in view of what has been stated today that that occur than anything else. I hope you understand the trepidation with which I make these remarks, but I hope the Court understands I am trying to spare the city the turmoil that is going to start once this happens or tell you how we ought to proceed.

THE COURT:

Let me say that I have some of the same trepidations you do. I had asked for this in the office the other day, some group of citizens coming in here writing a letter of the [313] Court and do they have some official status as to what they have done or are we going to get cross-examination or are we going to get to ask somebody where he lives or something of this kind. I thought I might as well put that matter in the record and get it straight.

Now, the parties are going to have the benefit of the communications that the Court has gotten about it, that is, from Mr. Rutledge, Mr. Hernandez, and also a paper from the black community that was filed as a part of the Task Force plan. Now, as far as I am concerned, I wanted the parties to look at the matter and see what this group had come up with in the light of their negotiations.

MR. WHITHAM:

My remarks really suggest with it the good things and bad things. We can take into account whatever negotiations the parties can take part in. My thought was the purpose of telling the Court and the lawyers and the whole community what that group thought has been served but to formalize it in the presentation of a plan with its advocates in that process and make it a part of the record that may have to go forward where the Fifth Circuit perhaps sits back and this [314] may set a record of number of plans before the Court. I am simply trying to avoid that complicated process if the purpose has been served. I think all in this Courtroom know that it's purpose has been served.

THE COURT:

If it's been served, I certainly want to pursue it no further. While in these cases sometimes I guess a question as to whether or not there has been due process arises, that often happens in desegregation cases, but I will leave that to the parties. As Mr. Whitham points out the plan is before the Court and we will leave it that way. If anybody wants to question anybody with that Task Force we will arrange a time for that.

MR. WHITHAM:

Might I also rise to ask, I am hearing the phrase before the court in the sense that it served the purpose of raising the issue.

THE COURT:

Yes.

MR. WHITHAM:

I don't hear that in the sense that the Court is considering it as evidence in this record, that's what I am saying. This Court's decision would be based on what's heard here in Open Court and I recognize that.

THE COURT:

Well, of course, I wanted the [315] parties to consider it. I asked you to do that in connection with your communications back and forth among the lawyers. Well, we will just proceed that way and leave it as it is or call for a witness from the Task Force if and when we want him.

Were you ready to go ahead with your rebuttal?

MR. WHITHAM:

The problem is I think we need to know this. We can't put on our rebuttal until we know whether or not we have got one more plan in evidence.

THE COURT:

Well, let's put it in evidence.

MR. WHITHAM:

The whole cross-examination of how it came about, I was trying to avoid that part of it. I was simply hoping that we have the knowledge and their suggestions and the parties take it into account but it not be another plan before the Court in the formal sense that it becomes adopted by the Court, that the Court finds the evidence of matters from what we have had here. If the Court is disposed that it is a plan before the Court to be

substantiated by evidence, then we would prefer to put off our rebuttal until that plan is before the Court and all the evidence and all the cross-examination. That was the point [316] that I was trying to make. Let's put it out of the Court record, so to speak. Let's thank the interested citizens and be done with it at that point, and to put it perhaps bluntly, or go through the hard labor of just one more plan before the Court and cross-examine the witness. If we take that stance the School Board would prefer to put on its rebuttal afterwards.

MR. MOW:

Might I make one observation without responding directly to his suggestion? I certainly would like to know before any other School Board witness gets on the stand what they think about the feasibility of some of these suggestions which is one of the questions that our group had. If they want to comment on it, I assume they will without having any other testimony in front of them and that's fine with me, but I would like for the Court to know that we want to cross-examine people on what has been proposed and see whether these suggestions have some merit. We would like to explore further some of the answers that will have to come from the school administration in terms of feasibility.

MR. WHITHAM:

Your Honor, under those circumstances, it has to be one more plan presented by [317] witnesses and they will have to be cross-examined. I was simply trying to avoid the turmoil for the city that is inevitably to come.

THE COURT:

Of course, every time we open Court and a witness gets on the stand we have turmoil because the witnesses don't get on that witness stand and all agree with each other, nor anybody else.

MR. DONOHO:

I would like to say that it's unrealistic to say that this plan is not before the Court.

THE COURT:

That is the problem I am having in my own mind. It is before the Court and to this extent it's before all of the parties. It's hard for me to accept the proposition that it's not in evidence. It has been filed with the papers in the case. Now, as I understand it, the school district says it's before the Court and —

MR. WHITHAM:

I would try one more time in my illustration. A plan could be filed, a pleading could be filed and simply abandoned, therefore it ceases to exist as far as being before the Court. The concept has been kicked about here for two or three weeks but if it is before the Court that deeply and before the parties, then [318] I see no other way to go but to proceed like it's one more plan. I simply wanted to avoid that circumstance.

* * * *

TRANSCRIPT OF PROCEEDINGS

VOLUME V

(Number and Title Omitted)

Filed: August 9, 1976

[2] PROCEEDINGS
(February 20th, 1976)

THE COURT:

Are we ready to proceed, gentlemen?

Is Dr. Geisel here? Would you come forward, please,
Doctor, and take the oath.

Will you raise your right hand?

(Witness sworn.)

DR. PAUL GEISEL,

having been produced as a witness at the request of the
Court was duly sworn and testified on his oath as
follows:

COURT EXAMINATION

BY JUDGE TAYLOR:

Q Would you give us your name, please?

A Paul Geisel.

Q And how are you employed at this time?

A I'm the Executive Director of the Dallas Alliance.

Q You are — you have a doctor's degree?

A Yes, I do.

Q And in what?

A I have a PhD in sociology from Vanderbilt Uni-
versity.

Q Where do you live?

[3] A I live in Fort Worth, Texas.

Q And are you employed by some institution of
learning at this time?

A Yes. I am on leave of absence but I continue to
teach at the University of Texas at Arlington.

Q How long have you been teaching there?

A Six years.

Q What do you teach?

A I'm a professor of urban affairs.

Q A Task Force as the Dallas Alliance for which I
believe you said you are the Executive Director, is that
correct?

A Yes, of the Alliance and I serve as the
professional assistant to the Task Force.

Q Well, that Task Force filed with the Court a Plan
for suggesting guidelines for the Court to implement in
connection with its order for the desegregation of the
Dallas Independent School District which is the matter
before us now.

Did you have anything to do with the formation of
that Plan?

A In terms of the specific decisions of the Plan, no.
The Task Force always operated in the context of the
policy decision-makers. My role was to provide to the

Task Force the kinds of information they requested and [4] in that context I did a survey of the national types of programs that were taking place and also tried to find the implementation processes as a recommendation to the Task Force in terms of their desires.

* * * *

Q (Continuing by the Court) Before doing that [5] though, Dr. Geisel, would you give us the benefit of your educational background?

A Well, as I say, my PhD is in sociology from Vanderbilt. The dissertation that I wrote was a study of the educational and aspirational achievement levels of students in the Chatanooga School System and that was a study done in cooperation with Dr. Nolan Estes, at that time, in 1960 when I was at that time employed at Tuskegee Institute. I also was doing a study at that time in the City of Nashville on the question of the decision to desegregate which was an analysis of the question of how do black families make the decisions rather than how do white families respond to it, which was, as I understand it, the first study done to take the question of the black response to the desegregation process.

Following that period, I taught at a number of universities including a period at the University of Pittsburgh at which time I was the Educational Chairman of the NAACP of Allegheny County. And did an analysis of the Pittsburgh Public Schools in terms of racial achievements and racial integration.

From there I worked as a Director of Research in the War On Poverty in Ottawa, Canada and then as professor at Oregon State and then at the University [6] of Texas at Arlington.

* * * *

Q I see. How did — how was this educational Task Force, how was it organized?

A It was organized following a number of meetings at which time the Alliance was considering ways to positively and constructively help the community find a way to accept and deal with this change in the public [7] school system, assuming at that time a rather early order from this Court. Following that it became clear that the community needed to be involved in the whole process of making the decision for their children and that one of the things that could be of genuine help, as it was felt by the leadership of the Alliance, was that the process of trying to get the community input by way of addressing the entire educational issue as well as a pupil assignment issue, could be met and handled. It was also felt that it was necessary to establish an interracial team of people to struggle together to see what kind of consensus we could come to rationally together. At that point Mr. Lowe, the Chairman of the Board of the Dallas Alliance, appointed and constructed a committee or a Task Force of twenty-one persons. It was made up of six black people, seven Mexican-American, one American Indian and seven white.

There was no particular emphasis on the need for these people to be representative in that at the very

first session and in following sessions we attempted to tell everyone that they must work as individuals and they must attempt to represent the kinds of issues and kinds of needs and dreams for the educational attainment of our children in the City of Dallas. This was an extremely heavy weight, I think, that was placed [8] on people.

Q You mean the people on the Task Force?

A Yes. And I think the experiences which they had while the news media tend to give them some highlights these days of being in disagreement, I would like to emphasize that this I think was a heavy burden that these people carried. I think they carried it very well and I think the commitment to the proposal we had submitted to the Court is overwhelming. A firm nineteen out of twenty-one persons and I think more than that, even the two who have indicated disagreement are in substantive agreement with the process and are firm supporters of this entire notion that the community should have a voice in the process.

THE COURT:

The names of the people who serve on that Task Force I believe are on one of the documents that was given to the Court which is entitled A Public Statement of the Education Task Force of the Dallas Alliance. I will ask if somebody will let the Court Reporter mark this as an exhibit and hand it to Dr. Geisel.

(Whereupon the aforementioned instrument was marked Court Exhibit No. 1 for purposes of identification.)

THE COURT:

All right, would you hand that to [9] Dr. Geisel?

Q (Continuing by the Court) Dr. Geisel, that was filed with the Plan, that's your understanding?

A Yes.

Q Now, the names of the people on the Task Force I believe are on the second page.

A Yes.

THE COURT:

Well, that is before the Court and if you want to make an objection to it, as I say, that is before the Court. Of course, this is just one of the exhibits.

MR. WHITHAM:

Yes, sir. If it would facilitate things, if the Court wanted to go ahead and mark all of them then the remarks that I would make in an objection would be directed to all of them.

THE COURT:

All right. Well, there's also a synopsis of the Plan which was handed to me as well as a copy of the Plan itself. Let them all be marked.

(Whereupon the aforementioned instruments were marked Court Exhibit Nos. 2 thru 7 for purposes of identification.)

MR. WHITHAM:

I take it that as soon as the marking process is complete the Court would hear the objections?

* * * *

[21] Q (Continuing by the Court) Now, Dr. Geisel, I understood you — now when did you actually go to work with this Task Force?

A In the middle of October.

Q Middle of October?

A Yes.

Q How did that Task Force operate? Did it meet [22] at stated intervals? How did it work?

A It met on a regular basis every Tuesday evening for an extended period up until about December 16th. In the first process we were briefed by school people, we were briefed by city officials. I traveled throughout the country to meet with various leading figures in the field of desegregating of public schools in America.

Q Where did you go?

A I went to Washington, I went to various places —

Q Washington, D.C.?

A Yes. I was to have gone to New York but it turned out the consultant from New York came to Dallas. So I met with him here. I talked by phone extensively with people in Atlanta, Charlotte-Mecklenburg, Jacksonville, Florida. Altogether I think I saw approximately thirty different people who are leading figures in this process nationally and tried to take their advice. I then came back to the Committee, made a report on the kinds of ideas and the kinds of processes used to desegregate schools and the kinds of issues that are involved. They had already been briefed, as I said, on what was happening in the city and kinds of issues that were germane here. We then also discussed the whole kinds of set of strategies that were involved in

these [23] things and some ideas. They then, as a group, articulated their questions and their desires and their kind of what they felt were the appropriate guidelines for us to proceed on and that was done on Tuesday evening of December 16th. I was then given until January 6th to attempt to formulate and develop and flesh out what the proposals would look like if they were turned in as proposals for a desegregation plan.

I then worked extensively and with marvelous cooperation with the people at the Dallas Independent School District who were extremely helpful. They did not agree in some instances with some of the proposals but were very cooperative in providing all the information that we needed. And we had a workbook at that time prepared.

Q Had a what?

A A workbook. That was distributed to each of the Task Force members to show them the implications and the full elaborations of what the ideas looked like at that time. Considerable discussion then followed that presentation and the Task Force at that point began meeting on Tuesday nights as well as on Saturdays and in many instances on Sundays. So altogether this Task Force spent, we estimate, about fifteen hundred hours together. They knew more about one another than I think [24] they sometimes wanted to know but they did have an opportunity to go up and down on various kinds of issues and had a rather thorough understanding of what they were dealing with.

Q Are you suggesting that they were not all in agreement throughout all of their —

A No, I wouldn't say there was always considerable disagreement, but a large part of that I think is due to the fact one of the burdens which I mentioned earlier and secondly to the issue of a good deal of confusion in different ways of looking at these kinds of issues, and it takes a while and there was pressure here. Altogether I would say that the — as I have made the point earlier, as well as the attitudes and communication that was achieved in the final analysis could not be highlighted greater. These people did come to a consensus. They did come to a community of the mind and they did come to an understanding of what each was attempting to achieve.

Q You spoke of consensus. So that the record is complete, I did, on the evening of I believe that was Monday, the 16th —

A Uh-huh.

* * * *

[48] Q (Continuing by the Court) As you told us, you [49] divided — the city was divided into five pieces of pie.

A Yes.

Q The School District was.

A Yes.

Q And you left South Oak Cliff. Now, as I would look at that map, it would leave South Oak Cliff all black, I believe that would be.

A Essentially.

Q What was the reason — was there any reason for that?

A The reason that had to do with two components, I believe. One was the issue of attempting to — not to do cross town busing or do busing that required a travel time of greater than thirty minutes. The second reality was that the nature of the present racial migration and movement in the city is both to the southeast and to the southwest. And that if we could bring special magnet programs into that particular district that would be district-wide, we have proposed for example that middle school magnets be there. We've also proposed that the centrality system of the high schools be such that the greatest accessibility would be for that area to enter into one of those areas. In other words, in order to maintain the balances that exist and the way to find [50] accessibility for all of those students into the entire system at a convenient position of some technical feasibility we have attempted to focus the program orientation in their direction.

THE COURT:

I see. All right, gentlemen, you may question Dr. Geisel.

I assume the order that we've been following, unless somebody wants to defer to somebody else. Toss a coin to see who goes first.

MR. CLOUTMAN:

I nominate Mr. Whitham, Your Honor.

CROSS EXAMINATION

BY MR. WHITHAM:

Q Dr. Geisel, what is the Dallas Task Force? How is it composed?

I'm sorry, let's start at the beginning. Could you describe for me the organization of Dallas Alliance? What is it?

A The Dallas Alliance is a community service organization whose intent is to act upon urban issues of the total city and county. It's made up of a Board of forty persons, sixty of whom represent governmental entities in various ways, twenty-four in the community at large representing the business community, citizens at large and to represent racial and other groups accord- [51] ing to their proportion in the population.

Q Well, I take it then it has some form of general membership made up of individual persons and also made up of organizational entities, is that correct?

A Well, the organizations that cooperate with us, as we call cooperative organizations, are not in any way constrained by the actions of the Alliance.

Q I didn't ask you that, sir.

A Okay, all right.

Q Is Dallas Alliance made up of a list of individuals — do you have a list of persons that belong to Dallas Alliance?

A I don't know if I have a list with me.

Q Is there such a list?

A Yes, there is.

Q A membership list?

A Yes, there is. It's a Board of forty trustees.

THE COURT:

It's what?

THE WITNESS:

It's a Board of forty trustees.

Q Well, now, that's what I'm trying to get at. Is Dallas Alliance a Board of persons or is Dallas Alliance an organization that has a membership of individuals that then elect a Board? I'm trying to determine its structure.

A It is a Board.

[52] Q All right. Now, the Board then would be the list of individual members, is that correct?

A That's correct.

Q Now, at the noon recess could you produce a list of that Board of individual members?

A Certainly.

Q Would you do that, please, sir?

A Certainly.

Q Now, in addition to Board membership of individuals, are there organizations that compose Dallas Alliance by membership therein?

A The term membership is inappropriate in this instance. They are cooperating organizations with whom we communicate and with whom we gather input together with various other proposals for action.

Q Now by we do you mean the Board?

A Dallas Alliance, yes.

Q As composed of this Board?

A Yes.

Q And the Board is some forty persons?

A Yes.

Q All right. So Dallas Alliance is a Board of individuals consisting of some forty persons and that Board of forty persons then has outside organizations with whom it communicates.

[53] A Yes.

Q Now, what is the basis of that communication? Is it just you need some information from an organization so you write them a letter or is it a more permanent type organization relationship?

A Some of this is emergent.

Q Is what?

A Is emergent and we're developing a process so I wish to couch my answer as a permanent recognizing at any moment that which is presently permanent will be changed to more — to be a more facilitative process. At present there are seventy-seven correspondent organizations to the Dallas Alliance.

Q Now, do they become correspondent to Dallas Alliance by reason of some prior arrangement between the forty-man Board and those organizations?

A They become correspondents after being briefed on the purposes of the Alliance and asked whether they would like to, in a cooperative manner, deal with our Task Forces or participate with us or have input with us or respond in some way. It's in no way a commitment on them that they must act necessarily as we do.

Q All right. Do I understand, perhaps from your answer, that Dallas Alliance has various Task Force directed to various interests in urban affairs?

[54] A Yes.

Q That as to a given interest in urban affairs a given Task Force might then seek communications with some outside organization.

A Yes.

Q And that outside organization would be identified for that particular Task Force in some form of communication would work between the Task Force and that organization?

A Yes.

Q So the outside organizations that we speak of are simply entities both business and governmental that provide a system for input for help to various Task Force — Task Forces as they are about their business?

A Yes and no.

Q All right. Let's try the yes part of it and then the no part of it.

A If you're asking a particular reference to the Education Task Force the answer is yes in the sense of consulting. With regard to the other two Task Forces presently in operation, Criminal Justice System and Neighborhood Regeneration and Maintenance, in this regard large numbers of persons from the correspondent organizations do participate as Task Force members per se.

[55] Q All right. There are then three Task Forces in operation now, Education, Criminal Justice and Neighborhood what?

A Regeneration.

Q Neighborhood Regeneration?

A Uh-huh.

Q Now, who are the organizational consultants to the Educational Task Force?

A You mean which groups in particular?

Q Yes, sir.

A I cannot identify those for these were left to the liberty of the individual Task Force members to consult with those groups they felt could be most helpful in guiding them.

Q Well now, let me stop you right there so that I understand, please.

A Okay.

Q And I did not mean to cut you off, if you will please understand.

The Task Force — Dallas Alliance has three Task Forces. One of them is this Educational Task Force. And that Educational Task Force in itself as an entity and Dallas Alliance as an entity did not arrange for any outside organization to be one of its consultants but rather left that to the individual [56] members of the Task Force?

A Yes.

* * * *

[59] Q And with the one exception you just mentioned as to Mr. Jack Lowe, you would not be able to identify the cooperating organizations contacted by any of the other members of the Dallas Alliance Task Force?

A No, I would not although I know it was made.

Q Now, you came with Dallas Alliance in October of '75?

A No, I came in August.

Q August of '75, as its Executive Director?

A Yes.

Q Now, at that time did it have — did Dallas Alliance have an Educational Task Force?

A No, it did not.

Q When was the Educational Task Force constituted as a Task Force?

A I believe it was in the middle of October, but I cannot give you the specific date.

Q All right.

A I'm sure I have that on record, but I do not recall the specific date.

Q Would you bring, over the noon hour, the specific date of the formulation for the Dallas Alliance Task Force?

A What I can refer to is the date that the Task Force was authorized as a Task Force, namely from the [60] Dallas Alliance Board meeting of that month.

* * * *

[61] Q Do the minutes that you're going to produce reflect who was in attendance?

A Yes, they do.

Q Do you recall at that meeting who made the proposal for the creation of the Dallas Alliance Education Task Force?

A The proposal was presented by Mr. Lowe as Chairman of the Board of the Dallas Alliance.

Q Did any other person speak in favor of the creation of the Educational Task Force at that meeting?

A There was considerable discussion, as I recall. I think once we see the minutes we will see in particular those who do.

Q Do the minutes reflect who spoke or at least a summary of their remarks?

A A summary of their remarks will be in the minutes as particular individuals made particular proposals, that is part of our ordinary minutes.

Q Do you recall whether Mr. Lowe was the only speaker or were there others present who spoke?

A There were a number of others.

Q How long did that meeting last or will that be shown on —

A That will also — I don't know if that's shown [62] on our minutes or not. The length of the time that our meetings took place, does it say how long it was? Fine, yes, it will show.

Q It will show?

A It will show.

Q How did Dallas Alliance at that meeting authorize the creation of the Education Task Force? How did they go about creating the persons to serve on the Board?

A A list was submitted to the Dallas Alliance Board of a committee which had been formed and they authorized that group to serve as the Task Force.

Q All right. Then I understand that — am I un-

derstanding you correctly that some person brought to the Board a list of persons to serve on the Task Force that had already been prepared?

A Yes, as a committee who had been working or had formed themselves to begin working on this question and that committee requested themselves that they be considered a Task Force of the Dallas Alliance rather than as an independent process.

Q All right, as I understand it then, was it a group of — were all twenty-one members of the then Dallas Alliance Educational Task Force in attendance at this meeting that created the Task Force?

A I don't think so. I think those members who [63] are members of the Board were there.

* * * *

[64] Q All right.

A Charles Cullum.

Q Thank you.

A Juanita Elder. David Fox. Now, I make a comment now; as later action of the nomination — regular nomination procedure of the Dallas Alliance Board, two persons here became members of this Board.

Q Let's come back to them.

A Okay, so I will skip them. Walter Human.

Q Thank you.

A Jack Lowe, Sr.

Q Thank you.

A Rene Martinez. Randy Ratliff. Now, there were two —

Q You've completed the list of the initial members?

A Of the initial members.

Q All right, sir. Then go back and give me the persons who subsequently became members of the Dallas Alliance Board from the list of the Educational Task Force.

A Lupe Gonzalez.

Q Okay.

A And H. Ron White.

Q So by my rough count there were nine persons [65] now serving on the Education Task Force who were then members of the Dallas Alliance Board?

A That's correct, I believe.

Q All right. Now, some of those nine — all or some of them were present at this meeting when the Task Force was created, this meeting of Dallas Alliance when the Task Force was created and this group of nine or some of this group of nine had then in their hand a list of persons to compose the Education Task Force, is that correct?

A Yes, with the exception of one person.

Q Who was off the list?

A No, who was on this list at this time but was not on the initial list.

Q Okay, was — is there somebody on the initial list who resigned?

A No.

Q All right. Was a person subsequently added to the list?

A Yes.

Q Which person shown on Court's Exhibit Number 1 second page, was subsequently added to the list?

A Juanita Elder.

Q Juanita Elder?

A Yes.

[66] Q So I take it then that Juanita Elder having been given as an initial member of the Dallas Alliance in your enumeration was not on the initial list though a member of Dallas Alliance —

A That is correct.

Q — but subsequently became a member of the Task Force?

A Yes.

Q I correctly understand that?

A Yes.

Q Thank you.

Why was — in other words, there was no resignation, they just wanted to add an extra person, is that what happened?

A We wanted to add a representative of the American Indian community.

Q Now, the list that was prepared of the proposed Education Task Force offered to the meeting we are discussing held by Dallas Alliance, had been arranged in advance, I take it? Were the names written on a piece of paper?

A I don't recall how they were presented.

Q Or did someone stand up and simply read off the list of names proposed?

A I'm sorry, I really don't recall how it [67] happened.

* * * *

Q All right. So even before the Dallas Alliance in October at its meeting constituted an Educational Task Force, there was in existence some committee of the [68] Dallas Alliance?

A There was a committee, not necessarily of the Dallas Alliance. It was a committee —

Q All right, a committee of whom, then?

A A committee of a number of members of the Dallas Alliance and a number of community representatives working together. At that time they were not a formal part of the program of the Dallas Alliance but were merely exploring together what kind of a process, what kind of a procedure they might follow in developing an Educational Plan.

Q Well, if these persons on the committee were not a part of the Dallas Alliance, were they just a group of citizens? How would you categorize this committee?

A Categorize it as a group of citizens of which a large number were members of the Dallas Alliance Board.

Q All right. So sometime prior to October there was a group of citizens, some of whom belonged to Dallas Alliance and some of whom did not had constituted themselves together to look into some matters with respect to education in the Dallas Independent School District, is that fair?

A Yes.

Q All right. Do you know who that committee was? [69] I'll call it the Committee as distinguished from the Task Force. Was it composed of whom?

A Of twenty of the persons identified here.

Q And would that be all of the twenty except Juanita Elder?

A Yes. I believe they all had the opportunity to come together. I stand to be corrected, there may be one person who didn't attend all of the previous meetings.

Q Now, what did you understand this Committee of citizens to be inquiring into or concerned with before they came to Dallas Alliance?

A I think they were inquiring into whether such a process was possible.

Q And by such a process, what do you have reference to?

A The development of a desegregation plan. And I think they were exploring the best ways that that might be accomplished and how they might be organized.

Q You don't know whether that Committee of those citizens are the sole and only group of citizens within the Dallas Independent School District who might be concerned with how to arrive at a solution to the desegregation process, do you?

A I would know for a fact that every citizen in the City of Dallas is concerned with the educational [70] quality of the Dallas Independent School District.

* * * *

[75] Q Direction or charge?

A Yeah, the charge was made.

Q What charge was given the Education Task Force by Dallas Alliance upon its creation?

A To attempt to design a plan for the school system.

Q What type of plan for the school system, a plan to do what for the school system?

A I don't know that the specific language is in the minutes, and I cannot recall the specific words. I can speak, I think, in relation to the intent of the comments.

Q Assuming —

A Which was that —

Q Assuming that the record might be clearer in the minutes, what is your understanding of the intent of the charge?

A Okay —

Q As it describes the quote, plan, end quote?

A At that meeting Mr. Lowe presented the five purposes which I have earlier responded to and that became the charge of this Committee.

Q And by that, we have reference to they were charged to find a means to provide the best educational opportunities for the children?

[76] A Yes.

* * * *

[101] Q So you're recommending to the Court discontinu- [102] ance of the Tri-Ethnic Committee as an effective means?

A Yes.

Q I was not quite certain what your response was to the Court when the Court asked you what a "Concensus" was. What is a concensus agreement or recommendation or decision?

A That's a very tough question and it's one over which this Task Force wrestled for some time.

I would suggest that I think the word "Vast Majority" is inappropriate.

Q The word what?

A "Vast majority" is inappropriate. It is really a meeting of the minds that we have a proposal to submit.

Q Is it a bare majority?

A In this instance it is anything but a bare majority.

Q It is what?

A Anything but a bare majority. I would suggest, as I said earlier, that this proposal as submitted reflects the support of nineteen of the twenty-one members firmly and of the two who have indicated some reservations, their response are reservations to certain portions and not the entire proposal.

* * * *

[103] Q Well, to determine then whether they supported [104] it, how was that determination made, in a group meeting or on an individual approach basis?

A It was done on an individual approach basis following this past Monday.

Q Following this past Monday?

A Yes.

Q What occurred on this past Monday?

A The Plan was submitted to the Court.

Q And then subsequent to submission to the Court then the proposal was taken to the members of the Task Force on an individual basis; is that correct?

A Sixteen of the members of the Task Force presented it to the Judge on Monday evening. The remaining three and their support we learned of later.

Q But, before it was submitted to the Court there was no vote of the Task Force?

A There was a meeting on the Sunday before the Monday at which the general content of the Plan and the concepts of the Plan were approved. A vote per se was not taken at that time, there was a general consensus in the room.

Q Well, if you would get before you the Court's Exhibit 1, 2 and 3.

A Yes.

* * *

[132] Q Do I understand that all School District personnel except for the one hundred and eighty-five top salaried line administrators are to be employed over the given period of years on a racial ratio basis based on general population by race in the Dallas Independent School District as distinguished from student composites [133] of the Dallas Independent School District?

A Yes, I would agree with that with one exception.

Q And that is what?

A We have not used the boundaries of the Dallas Independent School District for purposes of the racial balance, we have used the City of Dallas borders.

Q All right. With that explanation, then, I at least have in my mind around what population you base the quotas on?

A Yes.

Q All right. But, with respect to the one hundred and eighty-five people who have worked their way to the top of the District, their employment as determined within the given number of years is to be based on the racial — the racial ratio of students attending the Dallas Independent School District and not general population by ethnic origin within the City of Dallas?

A That's correct.

Q Was this particular personnel concept we're dealing with now as to the top one hundred and eighty-five administrators early or new to the contemplated proposals of Dallas Alliance's Educational Task Force?

A By what would you refer to as "Early"?

Q In the initial discussions?

A No.

[134] Q In the later discussions?

A Yes.

Q How late?

A In the last week, although an adapted form of this had been seen by the Committee I think about the second week of January.

Q By "Last week", does that refer to the period of time after negotiations within the Task Force appeared to have broken down?

A Yes.

Q Is this matter of what to do with the one hundred and eighty-five top salaried line administration positions the matter upon which the Task Force finally came together and was able to arrive at a consensus you speak of?

A This was one of the issues around which consensus was achieved, yes.

Q What was the other?

A All of them.

Q All of the others in the Plan before they came back together the last week?

A There was not a Plan before we came back together in the last week. There were a number of points on which some form of consensus was apparent but had not been assured.

[135] Q Could you detail for me the points of disagreement that caused the Task Force efforts to appear to have broken down?

A The disagreement was over —

MR. MOW:

Your Honor, could I, at this point, maybe impose a Warren Whitham objection for two reasons on this? It seems to me that the questions as to negotiations within the group really aren't relevant to the Plan that's presented. Secondly, I suspect if the group were here with an attorney he might well object on the grounds that their inter-negotiations as to what brought about certain points would be privileged, if not irrelevant, and I think we may spend an awful lot of time here if we get into who bargained for what and why with respect to this group.

THE COURT:

Well, I have considerable doubt about its relevance; however, I'll overrule the objection. Go ahead.

A What was your last question? I'm sorry.

Q (By Mr. Whitham) I don't even remember.

THE COURT:

Well, it had to do with the negotiations and who was contending for what. Isn't that about what it is?

Q (By Mr. Whitham) Yes, what were the points at [136] which it broke down on?

A I believe we broke down — and I would like to make a comment at this point as an interpretive comment. We had been meeting at one point for close to sixteen straight hours and so there was considerable exhaustion. If you wanted my personal opinion as to why we broke down I would say that we met too long.

Now, having said that, the particular issue on which we came apart was a debate between two forms of assignment on the 9-12 level.

Q And what were those two forms?

A One was a busing plan and one was a redesigning of the attendance zone option.

Q What was the busing plan concept; what did it entail?

A It entailed for those students who did not attend the magnets that within their areas they would be bused to the respective campuses to achieve racial balance or minority balance plus or minus ten percent.

Q And that concept apparently did not prevail in the ultimate Plan?

A No, it did not.

Q And would it be fair to say, then, that in exchange for that we came to the personnel quota arrangements reflected on page seven?

[137] A No, I don't think that would be a fair statement.

Q If not perhaps fair in your judgment, is it at least an appropriate observation on the way the process was arrived at?

A You could come to that observation, I do not.

Q All right.

A That infers that negotiations of various forms were taking place throughout this in terms of give and take and that was not the process.

Q There was no trading going on, I take it, in the Task Force meetings?

A I'm sure there was trading going on in terms of the discussions but I think in the final analysis twenty-one people voted as individuals.

Q All right. On page eight, again under personnel and their competency assessment, do you see paragraph two? What is the "Students' Education Plan" referred to in paragraph two on page eight?

A This was in the original draft and because of the attempt of the editing committee to put the entire proposal in generic form the individual education plan did not appear in the document before the Court. The document that has been submitted by the black members of the Task Force includes the education plan procedure I [138] believe, and if not, I have it. It was to have been included as a supplement to the proposal as an example of an education plan process.

* * *

[173] CROSS EXAMINATION

BY MR. CLOUTMAN:

* * *

[212] Q Is there any particular reason for that level of staffing one way or another?

[213] A Yes. I think the committee here had in mind the notion of final accountability in the context of being responsible and in positions of responsibility and minority persons to be a part of the decision-making process, to be effectively making the decisions germane to the actions and so forth of the District with regard to the meeting of the resources and of the meeting of the requirements for educational attainment for their children.

Q The testimony earlier, upon questions by Mr. Whitham in this area, was that you would not describe the inclusion of the second personnel provision — that is, the top administrative staff — as a trade-out for less student assignment?

A No. It was a late proposal but I would not call it a trade-out.

Q Well, let's see if I can understand then. The negotiations as I understood them between the Task Force broke down over student assignment and what to do about the student assignment I think at the high school level?

A Yes.

Q They resumed upon this proposal being accepted

by some Anglo persons on the Task Force; is that correct?

A Well, that's a way to read it. I think to infer that this was a particular kind of compromise in [214] that context is not entirely accurate. We have had proposals flying at us for months, this was just another proposal.

Now, the fact that its timing came at this particular time — and I'm not attempting in any way to dilute the Court or lead you astray from the conclusion which is obviously apparent — it seems to be apparent, but that is not exactly how it took place. It was a proposal which as I recall was received on Thursday night or before the Sunday and then came again on Sunday and —

Q But it is a fact —

A — it was agreed upon.

Q It was a fact that once that was agreed upon that student assignment at the high school level was left to the neighborhood pattern assignment, as you have described it, given the magnet concepts which would be in existence?

A Yes. However, let me assure again that the Task Force was called back together by the Dallas Alliance Board, so that it did not come together to compromise or not to compromise, it came back together upon direction of the Dallas Alliance.

Q I'm just pointing out, and I think it's in the record, I believe, that after they did come back together [215] those two things happened and they happened almost at the same time?

A Yes, they did, and that's a fact. No denying it.

Q Yes, sir. What guidelines would you offer the Court for new construction as you have indicated? You

say that new construction at all levels should promote the —

A Racial integration?

Q — unitary school concept?

A Yes.

Q What guidelines would you offer the Court for securing or for insuring that kind of construction program?

A Well, I think the concepts that we're dealing with here in terms of centrality by area and the concepts of centrality for the total City for nine through twelve offer neutral turfs in all instances, at least for K-3 on, for a logic on how to appropriately plan and distribute resources in such a way that those resources will never in the future be in a form that is discriminatory; that is, not accessible to all students of the District.

* * * *

[226]

PROCEEDINGS
(February 23, 1976)

THE COURT:

All right, let's proceed.

MR. CLOUTMAN:

Your Honor, I think it was left that I would reserve further examinations after looking at these documents Dr. Geisel supplied us. And I at this time have no questions regarding those although I do understand other attorneys might. I will pass the witness.

THE COURT:
All right.

MR. CUNNINGHAM:
May it please the Court.

THE COURT:
Mr. Cunningham?

CROSS EXAMINATION

BY MR. CUNNINGHAM:

Q Dr. Geisel, my name is Brice Cunningham. I represent the National Association for the NAACP and I would like to ask you several questions concerning the Plan that was presented by the Task Force of the Dallas Alliance.

I believe in answer to some questions from Mr. Whitham and according to a roster that was furnished to us, there are approximately forty members of the Board of Trustees of the Dallas Alliance?

A Yes.

Q And I believe that — state whether or not the [227] breakdown — in other words, how many blacks, how many Anglos or whites, how many Mexican-Americans, how many Indians?

A I believe at this time it's eleven black, four Mexican-American, one Indian and the remainder Anglo.

Q And the committee that met prior to the authorization of the Dallas Alliance Education Task

Force was — how many composed that committee and what was the ethnic makeup of that committee?

A I think I made it clear that that was not a committee.

Q Well, that group.

A Of the Alliance, and that was a group of persons who were exploring whether this would be an activity of the Alliance.

Q Well, this group or committee or these persons was there any particular makeup of this group of persons?

A That would depend on when you're talking about.

Q Prior to October 23rd, 1975.

A I think it essentially was four persons not necessarily at that time even exploring it from the perspective of the Dallas Alliance, four Anglo.

* * * *

[369]

EXAMINATION

BY THE COURT:

Q Dr. Geisel, I understood you to say that the Task Force got consultation from some thirty experts.

A About that. I have counted up and I think I have about twenty-nine or thirty on my list, yes.

Q Can you tell us who they were?

A I have it with me somewhere if you will give me a moment. I have them written down on a sheet and it

will take me just a moment to find them. Now, not all of these were persons who came or wrote us, some were and some weren't. Some we had to handle by phone.

THE COURT:

I am interested in how the Task Force went about this. Were they interested in talking to people who were skilled in the field of education or skilled in the field of desegregation?

A Both.

[370] Q Were they trying to get an overall view?

A Very much an overall view, most of these persons were persons that I contacted personally. In rare instances the consultants dealt directly with the Task Force themselves. Dr. Cardenas, who has testified in this case before, Dr. Horatio Reberree from New Mexico.

Q From New Mexico?

A From New Mexico and formerly associated with the Dallas Independent School District. They both met with the Task Force. Other persons included Dr. Robert Green, Dean of the College of Urban Development at Michigan State; Dr. Harold Gores, Educational Facilities Laboratory; Dr. Frank Rose, who is the Executive Director of the Lamar Society of the University Associates in Washington; Dr. Thomas Pettigrew, who is presently on leave from Stanford who is a leading sociologist in this area; Dr. Rudolpho Alvarez at UCLA, Professor of Sociology in Chicano studies; Wilson Rice, who we referred to earlier.

Q He is the Superintendent of Education in California?

A Yes, State Superintendent of Public Instruction and two of his assistants came here to Dallas and spent a full day with the Task Force and they were Davis Campbell and Marion Joseph, his two principal aides. [371] And they were here for two full days and met a full day with the School District personnel as well as meeting Saturday with the entire Task Force in retreat form. Another person from California was Ray Martinez, Superintendent of Instruction at Pasadena; Jim Taylor and Ron Prescott, both of whom are officials in the Los Angeles School District; Robert Nicewander who is with the United States Office of Education; Marshall Smith and Dennis Doyle of the National Institute of Education; Mr. Jack Troutman, who is a local consultant who worked with us; Dr. Julius Truelson, former president of the Great Cities School Systems and former superintendent of the schools in Fort Worth; the research and superintendent's staff of the Fort Worth Independent School District have been very helpful; the superintendents in Sacramento, San Francisco and so forth, Charlotte have been very helpful, the City Planning Department of the City of Dallas was very, very helpful in providing materials and meeting with the Task Force. I have got some others. It goes on. I don't know how many I have named here.

We did attempt to reach Wilbur Cohen and he is next to impossible to reach. Laverne Cunningham in San Francisco and Ohio State was very helpful. We maintained contact there. Dr. Earl Lewis, previously [372] referred to, gave us a report. I am sure I have missed some of the people but these are people that I have

listed here that have had direct contact with me. I believe that's it. There is another individual who is local who has since left the country is Dr. Richard Andrew.

Q Something was said somewhere about Dr. Leon Lessinger.

A Dr. Lessinger met with the people with the Dallas Chamber of Commerce trying to work toward the issue of accountability and then I met with Dr. Lessinger and further contacts were made with him.

Q Now, who is he and where is he?

A He is the Dean of the College of Education of the University of South Carolina and he has been instrumental in helping develop accountability systems in South Carolina, Colorado and Hawaii.

Q In the school systems?

A Yes.

Q Was this Task Force getting information from all of these experts either directly or through you?

A Yes.

Q Did they ask for this information?

A Yes.

Q Did the Task Force approach this as representative [373] ing any one group, that is blacks or browns or whites or just how did they go about it? Were they espousing any particular cause or one neighborhood or another neighborhood or one school or another school?

A No. They created a list of persons they wanted me to meet and to consult with as well and these came in from numerous sources. We talked to an awful lot of local people as well. Then I was sent on a national trip to

try to see as many of them as possible of those where felt necessary or helpful and have them come in. And we did that in the context of the time constraints and never once do I think we broke apart from the total city.

Q The total city?

A The total city.

Q The whole thing?

A That's right.

Q Well, what the Task Force came up with then is unique in the sense that you didn't imitate or copy any other city, is that right?

A That's correct.

Q But you did examine the systems in a good many different cities?

A Yes.

Q Was this done with a view to the nature of [374] Dallas and this community, this city, the composite of information that you got?

A Well, the twenty-one persons, as I said earlier, many of whom have extensive community experience in Dallas and others of whom had extensive experience with the School District itself, I think after the first few weeks began to cooperate and operate as a group, as a whole regardless of race. We were concerned with the total city. Now, they attempted to bring Dallas components in. We have talked a good deal the last two days of the early childhood educational model, the model proposed is one that is used in California although it takes many of the ingredients we had to adopt it to the Dallas interpretation in the context of what we understand the DISD to be doing and be capable of doing so

that it would work and there have been many adaptations to the local area.

THE COURT:

Thank you.

MR. WHITHAM:

Your Honor, the witness yesterday evening and this morning furnished me various documents that I had asked for and I would propose to limit the questions that I might now ask just to those and perhaps those suggested by the Court's questions as well as the documents presented to him.

THE COURT:

All right.

[375] EXAMINATION

BY MR. WHITHAM:

* * * *

[387] Q Dr. Geisel, I will hand you what has been marked as Defendant's Exhibit Number 17 and I will ask you if you can identify that as a copy of the minutes of a called Board meeting October 23rd, 1975 of the Dallas Alliance as revised November 10, 1975?

A That's correct.

MR. WHITHAM:

We offer in evidence Defendant's Exhibit Number 17, Your Honor.

THE COURT:

It's admitted.

Q Dr. Geisel, I will hand you what has been marked as Defendant's Exhibit Number 19 and I will ask you if you can identify that as the copy of the minutes of the Dallas Alliance of October 23, 1975 prior to the revision of November 10, 1975?

A That's correct.

MR. WHITHAM:

We offer in evidence Defendant's Exhibit 19, Your Honor.

THE COURT:

It's admitted.

Q Would you please turn to the second pages of both Defendant's Exhibits 17 and 19?

A Yes.

[388] Q On the second page near the bottom appears a list of five precepts or concepts that the Dallas Alliance considered at its October 23, 1975 meeting, does it not?

A Yes.

Q Now, incidentally, are you the person with the Dallas Alliance in charge of the preparation of the minutes of the meetings?

A Yes, I am responsible. I did not take these minutes.

Q But you're responsible for them?

A Yes.

Q Were you responsible for the preparation and distribution of Plaintiff's Exhibits 17 and 19?

A Yes, although I did not — see, we had at that time

Q I can't hear you, sir.

A We had at that time a temporary administrative assistant secretary, Mrs. Willis, who had never attended one of our meetings before. I was traveling at that time a great deal and she sent these minutes out before I had an opportunity to review them and that's why they were revised. She did not get all of the notations down exactly as it happened. It was her first meeting and her only meeting and she was not able to describe everything in the correct form.

* * * *

TRANSCRIPT OF PROCEEDINGS

VOLUME VIII

(Number and Title Omitted)

Filed: November 15, 1976

* * * *

[331] SUSAN MURPHY,
called as a witness in behalf of the Brinegar Intervenors, being duly sworn, testified on her oath as follows:

DIRECT EXAMINATION

BY MR. DONOHUE:

* * * *

[332] Q Give us a kind of chronology of the work you have done with the City Planning Department.

A My educational background is that I have a bachelor of architectural degree, a one hundred eighty hour degree with much emphasis in urban planning, from Tulane University in Louisiana. With the City of Dallas I first was employed in what was called the Advance Planning Section, which is still essentially the same thing I am in now, in that it dealt with problems in various communities. I have worked on several federally funded projects. I was the one that was in charge of preparing the new census tracts for the 1970 census. I headed up the address coding for the 1970 census. I worked in the community analysis program which was federally funded and helped produce a community series of reports. My prime planning experience since 1969 has been working with what we call the Interim Comprehensive Planning Program that involves citizen participation in communities throughout the City of Dallas.

Q Before we go any further, Mrs. Murphy, could you tell us what the name of your department is?

A The Department of Urban Planning, City of Dallas and I head up the Community Plans Division.

* * * *

[344] Q What is the community analysis program?

A The community analysis program was involved with some twenty-eight or twenty-nine studies. There [345] was a series of community studies done on every community in the City of Dallas. A special study was done on the inner-city. There was a housing study, there was an economic study done, just almost an across-the-board evaluation of all types of, I don't want to say problems, but situations within the City of Dallas.

Q All right. Specifically what did these studies result in in the East Dallas area?

A In the East Dallas area it resulted in the establishment of the East Dallas demonstration project which was a pilot program designed to investigate and address the problems of the inner-city communities and hopefully implement action that would help turn these communities around.

Q Okay. What specifically did that mean in the East Dallas area?

A In the East Dallas area the funding for the East Dallas demonstration project rested with the Department of Housing and Urban Rehabilitation. It meant increased code enforcement, it meant the establishment of a small city office in the Old Lakewood library which is still in operation. It meant many meetings with the citizens group that we had established out there in trying to determine their specific problems. It involved taking of a special survey to update data [346] in the community.

As far as other than code enforcement, of course, there has been the creation of the Swiss Avenue

Historical District which has had a tremendous effect on the whole East Dallas area in that the Historical District has encouraged new young families to buy into the area. It encouraged the citizens and the citizens committee to look at their problems, come up with solutions to make application for community development act funds to address the problems of the community.

Q And are these programs in East Dallas still going on?

A Yes, they are still going on.

Q I believe you even had a meeting last night?

A That is correct, I met with a group last night.

Q What was the purpose of that meeting?

A The purpose of that meeting is a continuing process of trying to address their problems. For example at the meeting last night we had presented to us petitions to be presented to the City Planning Commission for considering for proper zoning in portions of the East Dallas community. We had petitions of about four hundred fifty-six names turned over to us last night. These people are actively pursuing their problems.

[347] Q All right. Mrs. Murphy, I hand you an exhibit which has been marked as Brinegar's Exhibit Number 3, could you identify that for the record?

A This is a Xerox copy of portions of the community series report that was done for the community analysis program which was completed in June of 1972.

Q This community series report was made up of seven or six parts which included influences acting on

neighborhoods, comparative neighborhood quality, potential of neighborhoods, depth of blight analysis, revitalizing the middle city and citizen participation. This report refers to the study done for the Lakewood statistical community, is that correct?

A That's correct.

Q Now, I notice in various places throughout that exhibit, Mrs. Murphy, the reference to the terms "urban blight", we might turn to page IV-3 and look down to the second to the last paragraph in which there is a reference to ways in which the neighborhood is affected by potential blighting influences. Could you explain what urban blight is?

A Urban blight could be many things. It could be housing that is deteriorated, it can be a preponderance of absentee landlords who do not keep up their housing, it could be housing that is located next to [348] undesirable businesses. Probably in the East Dallas community the best example would be the preponderance of bars that are located, say, along Columbia or Columbia and Beacon adjacent to a residential community. It could be high crime statistics, it could be junk cars in a yard. In other portions of the city they have tremendous problems of odor rendering from plants. It can be so many things. It can actually be anything that makes a place undesirable to live.

Q All right. Rather than go through this exhibit page-by-page, could we generally summarize the impact of this exhibit regarding urban blight?

A This exhibit pulled out neighborhoods we — I might add in our work further divided the communities

into neighborhoods to have a smaller unit to work with.

Q Excuse me, which neighborhood is this?

A It is the area west of Abrams Road.

Q Generally this area here immediately to the east of Central Expressway and west of McMillan, is it not?

A That's correct.

Q Tell us generally what your report says.

A Generally the report says that this is a fragile area that at that time was still in relatively stable shape but it was the type of community that could [349] be if the system within the community was changed that you could expect some blighting influences to occur. There were already some there and more could result.

Q What does system mean, that is a planner's term, is it not, Mrs. Murphy?

A A community is made — when I use the term system, I am speaking of a community being made up of many differences, the housing stock, the transportation system, not only the streets, the freeways and the transit system but the churches, the schools, the shopping available, the parking space available, your whole spectrum of life. City planners love to use the term "work with and plan, and employment available".

Q All right. Could we summarize this report, Mrs. Murphy, as being your opinions and conclusions on the study of the Lakewood statistical community in June, 1972 of the blighting and just the general study of the area including any blighting problems that may exist in that community?

A That is correct.

Q And if the Court wanted to learn your opinions it would be just a matter of reading this report, is that correct?

A That is correct.

* * * *

[351] RAM SINGH,
called as a witness in behalf of the Brinegar Intervenors
being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DONOHOE:

* * * *

[357] Q Any opinions stated here or any other place in this report were your opinions as a planner, were they not?

A Right, sir.

Q They are still your opinions today, are they not?

A Yes, sir.

Q All right. In referring again to page one to the fourth paragraph down the page.

A Yes, sir.

Q It begins, "Conditions in East Dallas are certainly not at the point where wholesale clearance and redevelopment are necessary. Yet the basic mechanisms which affect development and redevelopment of an area are not at present operating to stimulate new demand for East Dallas as a residential

community. Unless this situation is altered, in all likelihood East Dallas faces continued decline."

Was that your opinion based on the data and information that you developed in this report?

A Yes, sir, it was the opinion of the whole staff as it was mine too.

* * * *

[359] Q All right. Now, I notice under the definition or the next paragraph headed "Goals", that one of the goals listed is to increase the attractiveness of the central city to middle-income families. What does this mean, Mr. Singh?

A This has been the main action in the whole United States of America. The middle-class families and upper-class families have moved to the suburbs or to the outskirts of the city. We thought the best way to bring life back to the inner-city community was when the American families might reside there again.

Q Now, referring to page six of the report, if the Court wanted to determine the information regarding the population in East Dallas as compared with the City of Dallas, he could do so by referring to page six which sets forth in summary fashion that in a ten-year period, 1960 to 1970, the population of East Dallas decreased 9.09 percent while the population of the City increased 24.23 percent, could he not?

A Yes, sir, right.

Q He also could go on and note that one-thirteenth of the total city population resided in East Dallas in

1970 whereas in 1971 one-twentieth of the total resided there?

[360] A Uh-huh.

* * *

Q Tables 3 and 4 on page nine first show the racial composition. Table 3 shows the racial composition [361] of East Dallas by census tract and the total city in 1960, is that correct?

A Right, sir.

Q Table 4 shows the racial composition of East Dallas by census tract and the total city in 1970?

A Right.

Q It's a similar table?

A Right, sir.

Q So that in looking at Table Number 3 the Court could note that the total white population of East Dallas for instance, in 1960 was 40,776?

A Right, sir.

Q And in turning to Table Number 4 the Court could note that the total white population had been reduced to 32,503 for a reduction of something over eight percent, is that correct?

A Yes.

Q And he can note in 1960 the black population was 8,434 and looking at Table Number 4 he could note it's reduced to 6,789?

A Right, sir.

Q He could note in Table Number 3 that the Mexican-American population in 1960 in East Dallas

was 2,119 and that had increased by 1970 by looking at Table Number 4 to 7,365?

[362] A Right, sir.

Q Turning back to page seven again, you could note in summary fashion that in the ten-year period between 1960 and 1970 the white population of the city increased 7.87 percent, the black population increased 62.67 percent and the Mexican-American population increased 166.10 percent in the city?

A Right.

Q But you would note in the East Dallas area and you could go on to note that while the Mexican-American population doubled, from 3.8 percent to 8 percent that in East Dallas the Mexican-American population quadrupled from 4.1 percent to 15.8 percent?

A Right.

Q There is other information about the increase or the changes in the white and black population during that period?

A Right, sir.

Q And this information in Report Number 1 was primarily based on the census information for the period through 1970?

A Right, sir.

Q All right. If the Court wanted to note your opinions at the time of this report as distinguished from the later report regarding change in school [363] population in East Dallas he could do so by turning to Table Number 13 on page seventeen, could he not?

A Right, sir.

Q This is a summary, and if the Court wanted to

know anything about the incomes below poverty levels in the East Dallas area as compared with the city as a whole he could do so by looking at page twenty-six and the tables on page twenty-seven, twenty-eight and twenty-nine, could he not, sir?

A Right, sir.

Q Would it be a fair summary of what these tables show to look at page twenty-six, the second paragraph and note that of all families in the City of Dallas in 1970 10 percent lived on incomes below the poverty level but in East Dallas 16 percent of all families lived below the poverty level?

A Right, sir.

Q If the Court wanted to get some notion of the patterns of the investment in real estate and improvement of land and development of land he could do so by looking at Table Number 23 on page thirty, could he not?

A Right, sir.

Q This again was as of February, 1974?

A Right.

* * * *

[365] Q And as a result of these surveys were you not able to develop additional information regarding the demographic characteristics of the East Dallas [366] statistical community for all races?

A Right, sir.

Q On an ethnic basis?

A Right.

Q The Court could get a summary of your conclusions, could he not, by looking at pages four through ten of the report?

A Right, sir.

Q And looking over on page five under the words "Racial Composition", the first sentence would be your conclusion based on your studies, Mr. Singh?

A Well, the conclusion is drawn on these statistics, sir.

Q All right, sir. Now, let me read to you these two sentences that I am referring to and let me ask you to explain them.

A All right.

Q It states here, "The slight change in total population does not reflect the rapid changes that have taken place in racial composition in the last fifteen years. The major trends are an out-migration of Anglos and an in-migration of Spanish surname and blacks." You go on to say, "These trends can be seen from 1960 to 1970 in the U.S. Census and from 1970 to 1974 in the number of births and elementary school enrollment." [367] And then you refer to Table 1.

A Right, sir.

* * * *

[374] WILLIAM DARNELL,
called as a witness in behalf of the Brinegar Intervenors, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DONOHUE:

* * * *

[377] Q I believe, Mr. Darnell, you were responsible for designating those cross hatched statistical areas on [378] Brinegar's Exhibit Number 1 as the inner-city, is that correct?

A Yes, sir. We included those as a suggested designation in the inner-city committee report that I referred to. Actually the City Council is the body which accepts that designation.

Q Could you explain for us what configuration and what information or what characteristics you based the determination that those areas are "the inner-city of Dallas" and you might define inner-city for us while you are at it.

A Partly it's a matter of convenience in that in order to make any kind of assessment of what you are doing or how well you are doing, you have to have an information base from which to do it, thus you almost always are forced to utilize census tracts. As has been indicated by Mrs. Murphy those standard statistical areas are an aggregation of census tracts. When you then look at the information that you have available for those standard statistical areas, SSA's as they call them in the government agencies, you look for certain symptoms, if you will, that appear very frequently in neighborhoods that have problems. You look for symp-

toms such as high vacancy rates, you look for a comparatively low degree of home ownership. You may see a comparatively [379] high degree of physical deterioration from the housing. You normally see a comparatively low income level by comparison to the city at large. You may see high infant mortality rates, high morbidity rates.

Q Morbidity?

A High disease rates of various kinds. You do not necessarily see each one of these in every circumstance but when a preponderance of these appear, it's a reasonable definition then to conclude that an area such as that is what we have called the inner-city. That is simply then an area in which those kinds of problem predominate.

Q All right. And you included the East Dallas statistical community in that inner-city designation, did you not?

A Yes, we did.

Q Why was that? First of all, when did this occur? When was this decision made by your department and yourself that it would be part of the inner-city community?

A I would like to point out again that the final decision did not occur until the City Council accepted the report. Those areas had been in fact suggested earlier in the report, I believe in a report that was finished in 1972, which Mrs. Murphy has testified [380] about called the community analysis-program. Our own conclusion was that that would be made at the time the inner-city report was prepared and that was approximately April of 1974.

Q All right. Going back to East Dallas, was there any special efforts made in East Dallas to develop data and information as distinguished from other parts of the city?

A Yes, as Mrs. Murphy has indicated, the city was already engaged at that time in a planning program of identifying particular neighborhoods, attempting to, particularly with respect to land use to develop some type of remedial action for neighborhoods, to establish with the residents of the neighborhoods continuing dialogue about the problems they conceived and the solutions they might have to suggest.

Q This was about 1972 or 1973?

A Yes, that process actually began even earlier and continued. The planning department program described three phases. Phase one essentially was exploratory and data gathering. Phase two which the citizen groups were contacted and some effort was made to examine the land use patterns, zoning and matters such as that. Finally, phase three which actually attempted then to take the results of phase one and phase two and in some [381] degree implement them. The job of implementation by its nature became closer to the mission of the Department of Housing and Urban Rehabilitation for which I work and to the Planning Department in its normal functions. We therefore agreed and set up between the two departments what we referred to as the East Dallas Demonstration Program.

Q When was this?

A This was again in the spring, I suppose, or summer of 1973 and actually became operational in January of 1974.

Q Go ahead.

A Well, the purpose of the demonstration was to take sort of these basic conclusions that had been arrived at by the citizen planning group and the urban planning program.

Q Could you summarize those conclusions with regard to East Dallas for us?

A I believe that the principal conclusion was that East Dallas was suffering from a number of problems, that's the obvious conclusion and the primary one I believe that that group identified. East Dallas as a community was zoned primarily for multiple family use, meaning apartments, when in fact the predominant land use, actual use on the land was single family [382] structures.

Q Okay. At that point had your department become concerned at all with the demographic makeup or the changes in the demographic makeup in the East Dallas statistical community?

A Yes, in the process of selecting an area in which to attempt a demonstration we tried to find an area that met a number of criteria. We set those criteria obviously in an attempt to come as close as possible to the array of problems that we felt would exist in other inner-city neighborhoods because if any of the techniques that were attempted in East Dallas in fact provide successful, obviously it would be helpful to transfer those techniques to other inner-city neighborhoods. We therefore looked for an area which was in the first place not totally in decay, meaning that there were areas that were moderately stable and even areas that

showed some degree of improvement in their basic conditions. On the other hand obviously we primarily were trying to deal with decline in inner-city neighborhoods.

Q Which would include such statistics as morbidity and health problems, unemployment, lower median incomes, the numbers of families above the poverty level as compared with the ones below and so forth?

[383] A Yes.

Q Do the reports of Mr. Singh referred to earlier set up some of the statistical information and bear that out regarding East Dallas?

A Yes, they do, although that information was not available or at least not compiled in this form at the time the selection was made.

Q I see. I think I interrupted you at the point where you were selecting the East Dallas community for the demonstration project, would you tell us what happened after that?

A Yes, sir. As I say, we attempted to find a neighborhood that met a number of criteria. I described one which was a neighborhood which in our opinion had progressed so far into decay that bringing it back from that state would be a very difficult or extremely expensive kind of undertaking. The second criteria that we set was that the area should already have in existence some reasonable high degree of community involvement and interest on the part of the residents of that particular area. A third one was that the area be ethnically or racially mixed. A fourth was that it lie within the outer boundary, so to speak, which is Loop

12. A fifth was simply whether or not the area had in existence what planners called some of the interest [384] structure, basically an adequate system of streets, roads, parks and sewers and whatnot.

On the basis of comparing among the various standard statistical areas, we chose jointly with the Planning Department the East Dallas area to try some of these efforts. We then proceeded to draw a budget for that project which was ultimately approved by the City Council.

It's worth mentioning also that the city previously provided for a very large amount of federal funds for the East Dallas area in a program similar to the one that is sometimes referred to as crossroads which was obviously a program carried out in the vicinity of Martin Luther King, Sr. Essentially it was also true that the East Dallas Demonstration focus or the focus in that particular program was in housing, on repairing sub-standard structures, on attempting to generally improve the environment. However, in this instance, the city, because of that previous request for federal funds had already allocated something on the order of two million dollars in bond funds to this particular area and therefore the demonstration program had a number of possible resources to work with and the resources obviously of the citizens themselves and their interest and the bond funds that had previously been voted which [385] could be used for various types of public improvements and we had the additional budget approved by the City Council to provide staff to assist in the project.

Q Okay. Now, I believe you referred to as being a pilot program, what specifically did the city through

your department, and I take it your staff do as part of this East Dallas Demonstration Project?

A First there were a number of additional code enforcement inspectors assigned to the East Dallas area, since from the outset it had been clear that bringing housing up to standard conditions was a primary concern. Secondly, the city made arrangements to occupy an actual office in the area in which the code enforcement staff as well as some of the project staff could be located. Third, we began the arduous task of assembling what we call base line data, meaning an attempt to measure as accurately as we could where we were at the start of the demonstration program so that we could quite obviously tell if in fact any progress occurred. That led to the preparation of the reports that we referred to as Report Number 1, and that essentially sets out a base line. We also staffed and held a very large number of meetings with residents of the areas through an officially designated organization put through by the Planning Commission called the East Dallas Design Committee.

[386] Q Was this an elected body?

A Yes, it was. In the process of those meetings with those citizen groups we explored virtually all of the topics that cover the things that make a neighborhood go or not go, what we refer to as the subsystems and that means really how people work, where people live, what they live in, how they earn their pay and where they get their schooling and where they buy their groceries, how they get to work, the whole array of what makes up the neighborhood and people in it.

Q This would account for such statistical information as the tables in this report referring to automobile

ownership and similar kinds of information?

A Yes, sir, we were attempting to paint as complete and accurate a picture as possible of the area, more or less, as it stood at the time we entered into this demonstration program.

Q All right. How does the analysis of the demographics and particularly the ethnicity of the area enter into the planners or how did it enter into your approach in East Dallas because there is a great deal of information in these reports about ethnicity?

A Yes, sir, ethnicity really is of primary concern when you are dealing with neighborhood revitalization only in the sense that it reflects, generally [387] speaking it reflects economic status or socio-economic status. You are not, except for just sort of informational purposes, you are not particularly concerned with the ethnic makeup of the population in the neighborhood except insofar that it is reflective of the socio-economic makeup in the neighborhood.

Q What does socio-economic mean?

A There are literally dozens of definitions in the literature of socio-economic status and a simply indicator of that which is quite accurate is income level. And it is the case that in an Anglo family, for example, that it has a prior median income than a Spanish surname family and in turn a higher median income generally than a black family.

Q All right. Was any information developed specifically about the median incomes of blacks, whites and Mexican-Americans in East Dallas?

A Yes, there is, I believe in Table 6.

Q And this is Report Number 2 which is Brinegar Exhibit Number 6?

A I'm sorry, I have an improper Table 6.

MR. DONOHOE:

Your Honor, we don't have other copies of this and we will have them later.

Q I will ask the witness to identify this document.

[388] A This is a copy of a table that was provided to me by Mr. Singh at some stage during our preparation of all this data going back some long time.

Q And what does that table show, Mr. Darnell?

A Essentially it displays the income ranges for the city, for Lakewood and East Dallas and then for Lakewood and then for East Dallas by \$999.00 increments.

Q Does it show the comparative data by ethnicity for the city, Lakewood and East Dallas, and Lakewood, and East Dallas all separately in categories?

A Yes, sir.

MR. WHITHAM:

I don't have any objection, Your Honor.

MR. CLOUTMAN:

No objection, Your Honor.

MR. CUNNINGHAM:

No objection, Your Honor.

MR. DONOHOE:

Your Honor, we offer Brinegar Exhibit Number 9.

THE COURT:

It's admitted.

Q From that table what did you conclude in summary fashion as to the comparative economic status of blacks, Mexican-Americans and Anglos in the East Dallas statistical community?

A I think you will find essentially the same patterns so far as the economic patterns as you do in the city at large. In 1970 the Anglo's average family [389] income in Dallas was \$15,615.00 and the income for a Spanish surname family would be \$9,232.00 and for a black family \$7,080.00. If you would pick, for example, the income level of \$5,000.00 from the table here, which is an approximation, shall we say, of above poverty level, of a family of four, in East Dallas the Anglo population, 8.22 percent of that population had that income level. 14.02 percent of the black population had that income level. 9.32 percent of the Spanish surname population had that income level. So either way you care to look at it it's a percentage of people having a low income and percentage of people having a high income. It's the normal pattern that the Anglo family on the average has a higher income than the Spanish surnamed or black.

Q This socio-economic status is the primary reason for evaluating the ethnicity of the area from the standpoint of planning?

A Yes, from the standpoint of neighborhood revitalization, yes, sir.

Q Could you explain for us what is the planner's objective as far as developing different socio-economic status in a neighborhood? Is it your goal to raise everyone's level or what is the purpose?

A I think you can generally observe in dealing with any neighborhood that the prime determinant of [390] quality of life in that neighborhood or whether proper-

ties are maintained and its general atmosphere is the socio-economic level of the people who live there. In the revitalization of a neighborhood you don't want to create a situation in which either you have all high income people or low income people. One is just as unattractive from a planner's perspective in the revitalization of neighborhoods as the other. What you look for if you can possibly bring it about is an economic mix in the neighborhood. You look for that for a number of reasons but the principal one is that the lower income people in particular have what we call a shortage, not only of income, but a shortage frequently of information resources and knowledge resources and even perhaps help or other kinds of resources. There is a belief among people who are engaged in neighborhood revitalization that having an economic mix in the neighborhood, first of all, benefits the lower income person by making available to him directly or indirectly resources of the higher income people in the neighborhood. Now, that does not have to mean actual money exchanged, knowledge exchanged, it can mean simple role playing, a great number of things and therefore that is the aim and if you look at that you normally have to deal with that in neighborhood revitalization. If a neighborhood [391] becomes populated entirely by a lower socio-economic group of people, you very typically have a pattern emerge which is high density of, if you will, the symptoms we described that East Dallas has which, of course, perhaps take their most extreme form in the kinds of housing projects that we have both here and in the East in which there are very large numbers of very low socio-economic groups of people forced in in effect because that's the only option there is available.

Q Is that what we sometimes refer to as slums and blighted areas?

A Yeah, that is frequently the outcome and in fact almost unavoidably the outcome of that eventually.

Q When we are talking or when Mr. Singh and I were talking earlier and he set forth his tables and conclusions with regard to out-migration of the Anglos from the East Dallas statistical community, do I interpret your testimony as saying that would also typically mean the out-migration of higher socio-economic status people?

A Yes, it would typically mean that.

Q And is that the basic reason for the concern about out-migration of whites?

A Yes, from the perspective of revitalization of neighborhoods, yes.

[392] Q What have you found in East Dallas as far as efforts on the part of the various socio-economic levels which I take it are of all races to work with one another in the revitalization program? Do you have any evidence in that regard?

A The only evidence you have realistically is you have the participation of the people in the community meetings in the formal organization of the setup as a citizens group to try to address this problem. There were, I am aware of people who participated in that group who were quite poor, who were renters and who had a much different perspective to bring to the discussion than another person who was, say, an owner of a number of apartments, units in the area. Both participated. With respect to ethnic representation there were typically representatives of the Spanish surname

population and there were normally one or two representatives of the black population.

Q All right. I take it you found there was much community support for your actions in the East Dallas area, is that right?

A From time to time. There was support for the general action. We would obviously, as anybody does, make a suggestion that would be resisted by everyone. That was part of the purpose to advance these kinds of [393] suggestions that looked sensible from a city planner's point of view and see what happens when the people that actually live there are confronted with this brilliant notion that you dreamed up.

Q Was the Swiss Avenue Historical District one of the ideas generated by the city staff that was adopted in the area by the community?

A I presume so. That actually all took place prior to my being involved in it. I would mention that the existence of the district was one of the reasons, however, that East Dallas was selected as a demonstration area.

Q So that the existence of this district was one of the causes of its selection?

A Yes.

Q And there was already some evidence of community involvement in the area?

A Precisely.

Q All right. Mr. Darnell, could you describe what the different community systems as I believe you referred to them that are looked to by planners in determining the nature of a community?

A I think there are probably as many opinions about this as there are people engaged in the business

but I think it would be general agreement that you are [394] looking at what is sometimes called the economic system which really means obviously where people are on income and you are looking at the housing system which is self-explanatory. You are looking at what might be called the services of the kind of subsystems, where you buy your food and that sort of thing. You may wish to include health care subsystems. Obviously you look at the educational subsystem. Those generally speaking would represent the scope of the concern in a neighborhood with a possible addition of the particular neighborhood of the transportation subsystem.

Q Well, does the status of these subsystems of particular importance in your efforts to revitalize and stabilize the neighborhoods?

A Yes, of course. These are not independent subsystems. They all link together and they all relate in certain ways to how the net income of those systems fit together and how well they fit is what determines what your neighborhood is.

Q Included in your description of systems as the planners use the terms in the school system, the schools in the area. Do you have any opinions as to the possibilities or the importance of this Court's order with respect to the transportation of any students outside of the East Dallas statistical community and what [395] that order might effect or what effect it might have on the efforts to revitalize the East Dallas statistical community and the probabilities that there might be a better way?

A Well, I think that Mrs. Murphy used the word fragile to describe the East Dallas community and I

would agree with the use of that term. It is a neighborhood in my judgment which at any time could go, so to speak, either way. I believe there is some small evidence of progress having been made in arresting decay in the neighborhood. If you make a major kind of change, for that matter, if you make a small kind of change in one of these subsystems that I refer to, it inevitably ends up showing up in a lot of other ways. There is absolutely no way that I am aware of nor am I aware of any literature on the subject but there is no way in reality to predict how that change in one subsystem may manifest itself through the neighborhood. But the probability is if you make a change in a subsystem, it will have an impact throughout. In the case of East Dallas in particular what you would normally expect to see, if you make a major change in one subsystem, you normally expect to see the basic trends that are there continue or accelerate.

Q Which includes out-migration of Anglos?
 [396] A Yes, I guess it does if that's the case. You also expect to see a further, for example, if housing is deteriorating, you expect to see that continue. If unemployment is high, you expect to see it go higher. It's simply not because obviously business has moved out but simply because of the relative employability of skills of the people who move in.

MR. DONOHUE:

Your Honor, we pass the witness.

MR. WHITHAM:

We have no questions, Your Honor.

MR. CLOUTMAN:

I have one, Your Honor.

CROSS EXAMINATION

BY MR. CLOUTMAN:

Q Mr. Darnell, my name is Ed Cloutman and I represent the plaintiffs in this action. You described for the Court a number of community systems or subsystems that form, as you described it, a statistical neighborhood and you indicate that if you change any of these subsystems or alter them in some fashion there will be some impact?

A Yes, sir.

Q You believe the probability might be to continue the present trend if one system is altered from its present revitalization standpoint?

A Yes, sir, I would perhaps put it this way, if I might, that there were a number of trends evident in [397] East Dallas when the demonstration began and there is some small evidence that those trends have been arrested.

* * * *

[398] ROBERT LEE BURNS,
 called as a witness in behalf of the Brinegar Intervenors, being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. DONOHOE:

* * *

[400] Q When you say this what are you talking about?

A The Swiss Avenue Historical District as well as through the bank in setting aside certain sums of money to be used for home loans, home improvement loans in this area to help the district be revitalized.

Q Tell us a little bit about that program.

A Yes, sir. When the Swiss Avenue group first began this effort to get this declared a historical district, the Swiss Avenue Historical District, the Lakewood Bank set aside one million dollars at the time to be used for people to purchase these homes and revitalize them because there were a lot of them which had deteriorated in the Swiss Avenue area.

Q Why was the Lakewood Bank interested in doing something like this?

A Well, of course, our livelihood depends on what happens in our neighborhood. This neighborhood is primarily the East Dallas and Lakewood area which we have been discussing.

Q All right. Did you take other actions in connection with this area?

A Yes, sir. We have run ads. We sent out direct mail pieces soliciting people to come in for home improvement loans. We used radio advertising.

* * *

TRANSCRIPT OF PROCEEDINGS

VOLUME IX

(Number and Title Omitted)

Filed: November 19, 1976

* * *

[2] EVELYN DUNSAVAGE,
called as a witness in behalf of the Brinegar Intervenors, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DONOHOE:

* * *

[15] Q What are you doing with regard to housing in that entire district?

A Well, we have done several things in the past and we are continuing these programs and expanding things. First of all I think I should specify that the characteristic that runs throughout area is the tremendous variety in housing.

Q In prices?

A In prices.

Q Could you give us a range?

A Everything from seven thousand, six thousand dollars to four hundred thousand dollars. I mean the area was purposefully developed that way. I would like to make a brief comment about that to talk about the kind of campaign we have undertaken. Prior to 1930.

the developments were developed comparable to a small town, I mean it wasn't bad. It wasn't thought as a detriment to have the president of a company living in close proximity to a school teacher who lived in close proximity to a laborer. It was a mix of people [16] economically.

Now, after that period of time because of a number of things, factors, the FHA, the war, the federal programs, that sort of dictate criteria for financing to financial institutions, developers had developed one price range type housing with which we are all very familiar. You can drive for miles in the City of Dallas and especially in the suburbs around Dallas and see the same price range of housing and it forces an exclusionary economic kind of living pattern. So in East Dallas, in Old East Dallas and in Lakewood combined we do not have that kind of characteristic. We have heterogeneity in terms of the housing stock itself and that allows for different kinds of people at different economic levels to live in this community and I would say that is the one homogeneous pattern that exists in the community.

Q As a matter of fact that has made for mixing of the ethnic peoples or the people of different ethnic backgrounds as well as different economic backgrounds?

A Absolutely. That's one of the reasons we feel critically that the community be protected because of the characteristics of the housing stock that allows different people, and unfortunately in Dallas, as we all know the socio-economic status of it is very frequently characterized by the racial divisions. The housing stock

[17] in this community basically allows the kind of mixing of all different kinds of people economically and racially, that you can't have commonly in other communities because of the economic divisions.

* * * *

[19] Q Could you tell us just some names or examples of numbers, however you can do it, of people, of the kinds of people that have moved in and who have expressed to you the fact or the view that one of the reasons was the racial and ethnic balance of the area in the course of your duties with the Historic Preservation League?

A Well, yes, the Earharts who are Intervenors moved into the area because, their primary reason was for the integrated school situation. The people who live right across the street from me moved in because of the mix in economic levels in the community. They don't have school children at this time but that was their rationale for it and they wanted an older house. There have just been a tremendous number of people to whom I have talked. Well, I think perhaps it should be said in the reverse fashion. Anyone I speak with the very first thing I say is you recognize this is a mixed community, you recognize this is a different kind of community than most of your say suburban communities and that is something that you are going to have to deal with. If you're not interested in this kind of lifestyle, I suggest you look somewhere else. Secondly, if you want to buy an older house you need to have a good marriage because I don't think you can buy an

older house and go through all the trials and tribulations without it.

Q Tell us a little bit about the ethnic makeup of those people that participated in the East Dallas Design Committee and the neighborhood committees. First you might just tell us what the structure is, the neighborhood committees and the East Dallas Design Committee.

A The East Dallas Design Committee is a representative group elected from the community. It's composed of twenty-seven individuals. They are elected from five neighborhoods in Old East Dallas. Each one of the five neighborhoods also have elected representatives, nineteen in each neighborhood for the four neighborhoods and then only one from the one neighborhood because of the population density of that neighborhood. So essentially you are talking about approximately seventy to eighty elected officials, elected citizens who are involved in the planning process for their community in conjunction with the Dallas City Plan Department and the Urban Rehabilitation Department.

Q Do members of these groups include members of Mexican-American, black as well as Anglo?

A Yes it's all racial composition.

Q In fact, some indication of the ethnic makeup of those persons interested in this community could be taken from the composition of the Intervenors, the ethnic [21] composition of the Intervenors in this case, is that not so?

A Yes, in the sense that the Intervenors are of Mexican-American descent and black and Anglo. We have mixed representatives in the Intervenor group.

Q Now, in going back to Exhibit Number 11, I noticed on page fifteen in the right-hand column at the bottom of the page a reference or the statement that an obvious offshoot was the growth of interest in areas adjacent to the Historic District. Lakewood, an adjoining solid middle-class community, suddenly became a prominent area once again. Businessmen in an adjoining shopping district completed redesign plans to attract more pedestrian shoppers to the center. Would you tell us a little bit about the effect of your programs in East Dallas on the adjacent areas of Lakewood?

A Yes. Real estate in the Lakewood community also had a resurgence, I know that from my experience in working with the realtors in the area and also with the financial leaders in the area as well as personal contact with people who are moving in and out.

MR. DONOHUE:

Your Honor, at this time we would like to offer Brinegar's Exhibit Number 11 into evidence.

THE COURT:

It's admitted.

* * * *

[361] RENE MARTINEZ,
called as a witness in behalf of the Court, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q For the record, will you give us your name?

A Rene Martinez.

Q Where do you live?

A 6251 Turner Way.

Q What is your present employment?

A I am the manager of the Department of Urban Affairs for the Dallas Chamber of Commerce.

Q How long have you been so employed?

A Approximately eight months.

Q Have you had any experience in the past with the Dallas Independent School District in the court order entered in 1971?

A Yes, sir, I served in the capacity of being a [362] member of the original Tri-Ethnic Committee since July of 1971 and later became the Chairman of that particular advisory body to this Court.

* * *

[363] Q All right. Well, now, to move on, were you a member of the Dallas Alliance Task Force that filed a plan with the Court?

A Yes, sir, I am. I am presently a member.

Q And you have been on that Task Force how long?

A From its inception in, let's say, November, late November, early December.

Q Were you in on the formulation of the original plan?

A Yes, I was.

Q And you are aware, of course, that, I believe it was, Mr. Hernandez and Mr. Rutledge who were also members of that Task Force that filed objections or disagreements or objections to the plan?

A That's correct.

Q Now, then, I believe Dr. Geisel has testified in Court in reference to it and since that time, or rather on yesterday a modification was filed. How did the Task Force get to that modification?

A The committee — the actual Task Force met Tuesday night. And before that the chairman of the Task Force had created a drafting committee that came up with additional revisions, modifications, some changes. In some cases there was elaboration on some points that we had originally submitted to the Court. That drafting [364] committee then presented its final revised form to the Task Force this Tuesday night. And we, of course, agreed to those revisions and submitted them to the Court the following day.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

* * *

(Number and Title Omitted)

HEARING ON PLAINTIFFS' MOTION
FOR FURTHER RELIEF

September 16, 1975

* * * *

[82] THE COURT:

Now, I am fully aware in the short time involved that the Plaintiffs have filed voluminous interrogatories which they have a right to do under the Federal Rules of Civil Procedure, but, I think that the least that the School Districts, these Defendant suburban School Districts can do at this time in the light of their proximity to the City of Dallas, which is definitely interested in this case and which was an original intervenor [83] and remains as an intervenor, and the suburban districts have enjoyed the benefits of the governmental services that are provided by the City of Dallas. Their residents have commuted into Dallas to work and conduct their businesses. And have done so without assuming any of the obligations or responsibilities for maintenance of these services. And I think that the districts — that the least these districts can do now is to answer these interrogatories and get the facts before the Court, and if it takes a little overtime work, a little more staff, I think they can do it. I think that fifteen days should be adequate for the suburban districts to answer these interrogatories or questions.

Now, as I said, I have lived with this case for over four years now and, as you know, the school district, the

Dallas Independent School District, has filed a desegregation plan which it did on September the 10th. The metropolitan NAACP has also filed a plan and I have reviewed these plans. I have not asked the attorneys for any comment or any argument about it because I am satisfied in my own mind about these matters at this point. The attorneys for the Dallas [84] Independent School District had asserted that it was the right and the duty of the school district to at first offer a plan to desegregate its schools before being ordered to follow a plan that might be designed by the Court and the Court agreed with that procedure even though the result might have reasonably been foreseen. Federal Judges are very conscious of the fact that school boards are elected officials and it is politically expedient to put the burden of these orders on the Courts so that any voter disapproval might be directed toward the Courts and it's nothing new. Legislators do it, Governors do it, city councils do it, Commissioner's Courts do it, even Presidents and Congressmen do it. On one occasion a Governor of Texas said as he signed the bill passed by the State Legislature, well, it's unconstitutional, but the Federal Court will take care of that. Well, the Court did and sure enough, the Legislature very promptly passed a resolution asking Congress to pass a resolution limiting the terms of Federal Judges.

Now, the School District's plan is patently not Constitutionally adequate. To mention just one item, forty-six schools remain as [85] one-race schools. And even if this Court should approve, which it doesn't, I have no

doubt that the Fifth Court would send it — would promptly send it back, and I don't know that I would want to read their sharp language.

Now, it's unnecessary to list other deficiencies but most important to me is the fact that it fails to address itself to providing a quality education for the children.

Now, the plan submitted by the intervenor NAACP, while it suggests some relevant and meritorious provisions, goes too far in the other direction and it therefore is unacceptable.

Now, at the first conference which the Court had with the attorneys for the Plaintiffs and the attorneys for the Defendants and, I believe, this was held within a day or two of the date of July 23rd, the date that the opinion of the Fifth Circuit was handed down, but at that time the Plaintiffs' attorneys requested the Court or requested the appointment of an expert by the Court to assist the Court in preparing an adequate desegregation order. The Dallas Independent School District attorneys argued that this action should not be taken because the plan which the School [86] Board had a right to file first could well make it unnecessary. Well, that just didn't happen. And the Court has decided to call upon Dr. John A. Finger, Professor of Education, at Rhode Island College, Providence, Rhode Island, to act in that capacity. Now, he has served the Courts well in several of these cases. I know that this case is complex enough to require the assistance of experts and it's already indicated that the parties have their own and I think perhaps the Court is entitled to get in on that act with his expert.

Now, let's turn to what lies ahead of us. I want to say first that this is not my job and mine alone. It's not my job alone. We all have a job to do. The Plaintiffs, the intervenors, the Defendant school districts, the parents and everyone else who lives and resides in this district. Now, we all accept and enjoy these privileges and benefits of living under the great Constitution which governs this nation. Freedom, liberty, individual rights, not to mention the highest standard of living in the world, are ours. We must always remember that with these benefits and privileges we have corresponding duties and [87] responsibilities.

Now, at the beginning I wanted to address myself to the busing issue. The Court is not unmindful of nor insensitive to and has never been of the feelings and the emotions of many parents about this matter of so-called busing or forced busing. Now, there is no intention on my part to argue that question at this time or to try to change anyone's mind about it. Chief Justice Burger of the United States Supreme Court in the landmark case of *Swann versus Charlotte-Mecklenburg*, decided in April, 1971, pointed out that eighteen million of the nation's public school children, approximately thirty-nine percent, were transported to their schools by bus in 1969-1970 in all parts of the country. Now, what I just said was the direct quote from the *Swann* case. And I might add that there was no opposition to busing so long as the buses were used as tools of segregation. It was only natural that the Courts concluded that buses could be used as tools of desegregation. Pupils are being bused under Court

order in Boston, in Louisville, Indianapolis, Charlotte and many other cities. Now, there is no reason why we in Dallas think that we should be a chosen favorite [88] entitled to exception from the rule.

Now, there will be busing of students in the Dallas Independent School District simply because it's the law and we must all follow the law. My basic and primary concern, however, is what lies at the end of that bus ride for our children.

Now, I know that our young people can and will adjust, it's up to the adults to be as flexible. Now, I repeat that I'm not changing or trying to change anyone's mind about the merits and demerits of busing, but I would wish that the anti-busing advocates would direct their energies and their vocalizing to a positive and constructive end, that is a quality education for our children.

Now, in 1971 the desegregation plan that was submitted to this Court by the Dallas Independent School District was entitled "Confluence of Cultures." It had a beautiful red, white and blue color showing black, white and brown hands joined together in understanding, brotherhood and respect. It was dedicated to improved education for all students. There was guaranteed grade level performance for all minority students, desegregation teacher education centers, human [89] resource learning centers, compensatory education, just to mention parts of it. Now, this Court was sold and bought the plan but I fear that the School District didn't uphold its end of the bargain. As Dr. Conrad said, Dr. Emmett Conrad, a member of the

Board, said, the School District missed a golden opportunity. Now, had the District carried through, our problems at this time might well be significantly simpler. Now, I'll add this, I'm not inclined to fault the School District entirely. I say that the business leaders of Dallas have defaulted. I know that because in the beginning when this case was starting and was going on and as it had been pending I have had occasion to call upon some of these leaders and they have left the District to meet the problem alone and unaided and this has to be the height of shortsightedness.

Now, the business leaders have as their object to attract other businesses and industries into this great City and they, of all people, should know that there is little hope of success in that regard if public education here is inferior and if the City is torn by racial strife.

Now, with the wisdom and the acumen of [90] the leaders of this City, if they're willing to put forth the effort, there is no reason why either of these dismal results should occur and there is something worthwhile at the end of that bus ride for the kids. When one thinks of the institutions of higher learning, the colleges and the universities, the business establishments in this area, the banks, the insurance companies, IBM, Texas Instruments, Blue Cross-Blue Shield, Collins Radio, Xerox, the airlines, just to mention a few, that could be called upon to assist in the educational effort, one realizes that the possibilities for not just quality education but for a superior education in the Dallas Independent School District are simply unlimited and the children are entitled to it.

Now, these institutions and establishments could be enlisted to supply personnel on a part time basis for tutoring, instruction in different schools in the District and perhaps ultimately scholarships under contract and the supervision of the School District. It's time for the business leaders to stand up and be counted and I'm glad to see that some of them have and there are some that are deeply interested. Dallas [91] Alliance, for example, just to name one group and not with any view of excluding the others that are interested.

Now, as to how we will proceed in this case, fifteen days have been allowed the suburban school districts to answer the interrogatories and the Plaintiffs will need a few days thereafter to prepare for an evidentiary hearing on the questions that are involved. Such a hearing is set for October 6, 1975 at 9:30 A.M. and following that without interruption we will begin final hearing on a desegregation plan for the Dallas Independent School District.

Now, in the meantime, and this is routine in lawsuits, I want the attorneys for the Plaintiffs for the School District, for the intervenors and for their experts and the Court's expert, you will note that I am not including the attorneys for the suburban school districts, but I want these attorneys, the intervenors that have been allowed in this case and their experts and the Court's expert to go into executive session in an attempt to come up with an agreed plan to be submitted to the Court, one that will minimize busing so far as possible but in all events will [92] provide a quality education for the students.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, ET AL

versus CA NO. 3-4211

DR. NOLAN ESTES, ET AL

CALLED HEARING OF JUDGE TAYLOR

BE IT REMEMBERED that on the 18th day of December, A.D., 1975, the above styled and numbered cause came on for hearing before the Honorable William M. Taylor, Judge of the United States District Court in and for the Northern District of Texas, and the following proceedings were had:

[2] PROCEEDINGS

THE COURT:

Good afternoon, Ladies and Gentlemen. I'm almost afraid I've talked too much today. I hope my voice holds out while I talk to you about why I asked you in here today.

I never undertake a matter of this kind without a little fear and trepidation that what I say might be misconstrued or misunderstood, though I do try to speak in plain English. But, in these cases, as all of you know, it's so easy for people in an emotional state to read into

something that is said, something that is not intended and that's why I say I have a little bit of concern about it, but I wanted to do it anyhow.

I appreciate your being here. I prefer to have the lawyers and their clients, because then you hear it from me. I'm talking about the litigants, the clients, the members of the School Board, the members of the City Council and the attorneys, and you're not dependent upon a relay of information from the — your attorneys. And this may be a little unusual, but of course what I'm saying is on the record and will be a part of the record in this case. And if I say it's unusual for the Judge to be talking to the litigants [3] I will repeat what I have often said and that is that there is no other case like a desegregation case. They don't always follow the usual rules. Now — and after all, the litigants are entitled to know that, and I hope they do know, that the Judge is a human being. After all, he's just like you are, just like the rest of you. And even Federal Judges don't — no Judges, State or Federal, actually, sit in an ivory tower nor live in a vacuum. So I did want to talk to you briefly today about developments in this case and I want to say right now, and I don't want any misunderstanding about it, I have not pre-judged this case. I have not made up my mind about it. I will not do that until I hear all of the evidence. And the Court has not decided on any plan and will not do so until everybody has had — that the litigant here has had a chance to come forward and present their side of it. And I want that clearly understood.

Now, for example, the Court, as you know, appointed an expert in this case. We are going to have other experts who will testify. The Court's expert or the expert that was appointed by the Court was Dr. — or is Dr. Joe Hall who [4] has been in many of these matters. He has prepared and submitted to the Court a plan. I will make that plan — I will file that plan in the papers in the case next week so that it will become public. And I want it understood that just because it's Dr. Hall's plan, that's not the Court's judgment in this case and I repeat — I say that because of what happened in 1971 when the people with TED TAC filed three different plans for the consideration of the Court. You would have thought that the Court decided the case and those poor boys were attacked from all sides unnecessarily and what they had filed did not represent the final plan of the Court.

Now, I expect and hope that there will be other plans that are filed. Just for example, this is one of the developments that you may or may not know about. Through the news media, I learned that a class of students at Skyline High School had prepared a desegregation plan. I finally — not hearing anything from them, I called for that plan and that has now been filed with the Court. Of course, that was really one of the greatest experiences in the world to have those kids come down here to Court and talk about [5] their plan. And don't ever fool yourself, we've got some smart young ones in this city. But, I don't know whether the parties have or the lawyers have had an opportunity to see the plan that they prepared, but it is available and

they have provided the Court with adequate copies to go around.

That again is not the Court's plan and I'm asking and have asked for the submission of other plans. I expect the intervenors, perhaps, to come up with something, though they may not. Time will tell.

Now, going forward and more about why I asked you to be here. Back in 1971 when I had this case you may remember that — well, it was the memorandum opinion that I filed on July 15th, 1971 and I wound it up with these words: "I will suggest that the Dallas Board of Education should make the confluence of cultures an actuality rather than a catch phrase or a dream and that it can be a vast help to the City of Dallas in serving its Chamber of Commerce appellation, 'City of Excellence'".

Prior to any hearing in that case I had called some representatives or individuals from [6] the business community and from the community generally together with the request and in the hope that there could be a common solution so that there would eventually come forth an order that would be acceptable to a vast majority of the people living in Dallas or in the Dallas Independent School District. That plea fell on deaf ears. I was categorized, I think at that time, as a dreamer. Maybe I am. I still am to some extent though I've lived a lot longer since that time. Then, when we actually got into the hearings, I believe with that order of July the 17th, I had directed the School Board to come up with a plan by the 23rd of July, which it did.

Now, after that plan was filed, I then — and I'm

reading now from the order that I entered on August the 2nd.

"Thereupon the Court called for a private meeting of Plaintiffs and Defendants' attorneys and representatives as well as attorneys for Intervenor and Tri-Ethnic Committee Members to undertake the formation of a joint plan that would be in keeping with the respective contentions and positions of all parties concerned. Such meetings commenced on Friday and continued [7] through Saturday, Sunday and Monday, July 23rd through 26th inclusive to no avail. And hearing in Open Court was resumed at 10:00 A.M. on Tuesday, July 27th, and the Court proceeded to hear the evidence and arguments of Counsel that were presented by all the parties including the Intervenor."

Now, I have always been of the opinion and I still am that here we have an opportunity to do something really for Dallas. And it's just a job that can't be carried by one person alone. And I don't need to call it a job, I say it's an opportunity. It's an opportunity for the City, the City Council as well as the School Board. It's virtually impossible for the School Board to do it alone.

For example now, talking about the role of the Judges in these matters; of course the Courts cannot — now by that, I'm talking about not only Federal Courts, but State Courts, Courts cannot allow basic constitutional rights to be sacrificed to community opposition. In other words, we've still got to follow the law and the facts.

But again, I repeat that we Judges don't [8] live in a vacuum and the Courts frequently — and that's what

I'm doing now — undertake to give all effective members of the community access and — access to the Courts and do not merely create their own remedies without citizen input.

Now, I want to refer to what I said on September the 16th, that is in part. It was at that time that I had all of the attorneys in here, the Intervenors as well as the attorneys for the suburban school districts who had been brought into the case by the Plaintiffs and I made a few remarks at that time. I said this and I have no hesitation in repeating it. I have said in the past that my basic and primary concern is what lies at the end of a bus ride for our children. Now, one thing that prompted my saying that was that Dr. Emmett Conrad on the School Board had made the statement that in '71 the School Board missed a golden opportunity to do something for the education — I mean, he didn't say — missed a golden opportunity in 1971, and of course I took that to be a reference to what could have been done at that time and we did not carry through with it. And I faulted the School Board a little bit on September 16th, but I did [9] say this: "Now I will add this, I'm not inclined to fault the School District entirely. I say that the business leaders of Dallas have defaulted. I know that because in the beginning —". And then I talked about what I had attempted to do in calling together some of those leaders in 1971.

I went on to say this: "Now the business leaders' object and name is to attract other businesses and industries into this great City and they, of all people, should know that there is little hope of success in that

regard if public education here is inferior and if the City is torn by racial strife. Now with the wisdom and acumen of the leaders of this City, if they were willing to put forth the effort, there is no reason why either of these dismal results should occur and there would be something worthwhile at the end of that bus ride for the kids."

Now, the response of the business community and the other people in Dallas has been tremendous. I will not try to go into detail as to all that has happened, but I have had many calls. Just for example, "Well, Mack, what can we do?" And I had wanted the people in this community to [10] try and get together to do something for the City of Dallas. Now, we all love this City and I think there is an opportunity here for this City to be a leader in the field of education. Now, this opportunity is here. I want to take advantage of it. The School Board alone cannot do that. It's going to take the City Council, it's going to take the blacks, the browns, the whites, the business leaders, the school staff. It's going to take everybody.

You know, if we can build, along with Fort Worth, the greatest airport in the world at the cost of some seven hundred odd million dollars, and it is the greatest, now why can't we build the best educational system right here in Dallas, so that people are attracted here. They want their kids to get the best available education, and I think we've got an opportunity to do it. It's going to take the planning that the City Council has to do, the problems it has. Well now, I just mention those things. Everybody has this opportunity and we ought to take advantage of it.

So again, getting back to what I said on [11] September 16th, I called upon the attorneys for the Plaintiffs and the attorneys for the Defendants to get together to see if they could not come up with a joint plan that would be acceptable to the litigants and that they would feel comfortable in submitting to the Court as a proper order.

Now, with the interest of the business community, and I'm not trying to confine this just to the business leaders. They too have a stake in this, all of the citizens, and they've gone to work to try to do something and I think you're entitled to know about it.

Now, talking about what I was talking about at Dallas, we all know that very recently the voters in this City passed a rather substantial bond issue by a rather substantial majority. Now, that spoke volumes to me about the fact that the citizens of this City are not willing to just let it sit still and not progress. They want to move forward. We see throughout the country and throughout the state that bond issues are turned down by the voters, but not in Dallas and I think it's because they want to go forward.

The other development that I wanted to bring [12] forward to you and I wanted you to know about, because the Courts — the Courts don't operate in secrecy. We try to do everything right out here in Open Court with everybody to have a chance at it through their lawyers and through their witnesses to come forward with their views.

Growing out of that challenge that I made to the business leaders, there was, as I said, a terrific

response. The Dallas Alliance took an interest in it and they — the Dallas Alliance, as I understand it, is not to be confused with the business leaders. It's not necessarily composed of, but it has as members some seventy-five business organizations or rather clubs and civic organizations in Dallas. They went to work on this and arising out of that grew and developed a task force. This was under the leadership of Jack Lowe and Dave Fox and a few others who I'll not undertake to name. And this task force wound up with seven blacks, seven Mexican-Americans, seven Anglos and I believe one Indian. Now, they have sent Dr. Paul Kiser all over this country looking at different educational systems. Where they are going to wind up, they don't know, but they're working [13] with those people. That is, the blacks, whites and browns and the one Indian, and trying to come up with something for the benefit of Dallas.

Now, just as I wanted the input from those kids out at Skyline, I also want the input from this task force and I wanted you to know that they had my blessing and had gotten the go ahead signal from me. I couldn't very well challenge people in this community and then have them go ahead and not listen to them. So I want you to know of that development and the fact that I hope that with that combination of people that are working to the end of accomplishing something for Dallas, that they have my blessing and I expect to hear from them. Now, whether I'll hear from them as amicus curiae, that might be an appropriate way to do it though I haven't fully decided yet. But, I wanted you to know of that

development. And as I say, this — the Court wants this input from the people in this City and in this School District. And so that you would know that this Court's not going to — again, repeating — operate in a vacuum, but I want to hear from the citizens, I want everybody to know that they have access to the Courts.

[14] Now, I see Jack Lowe here. Jack, would you mind if I called on you to tell what you're doing or what it's like or how you're working? Would you mind —

MR. LOWE:

No, I do not.

THE COURT:

All right. I want to know.

MR. LOWE:

Should I stand?

THE COURT:

Why don't you come up here and turn around and face the folks out there.

MR. LOWE:

Can I stand this way?

THE COURT:

Yes.

MR. LOWE:

Thank you.

The Dallas Alliance Task Force which the Judge has described, when we got together — and it wasn't all that easy for us to get together — we tried to conceptualize how we could possibly be helpful.

THE COURT:

Jack, would you excuse me for a minute? I left out something I wanted to tell everybody. I asked Mr. Lowe and the other people of the Task Force: "What are you all trying to do? What's your aim? What's your goal?" And yesterday I was provided with this, which apparently this Task Force — what this Task Force has agreed on. One; provide best [15] educational opportunity for each child. Two; eliminate all vestiges of a dual system. Three; assure adequate accountability. Four; enable the entire school system to become a superior system which would attract families. Five; develop a continuing program that will contribute to a quality school system and community.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Number and Title Omitted)

TRANSCRIPT OF PROCEEDINGS
OF HEARING OF
DEFENDANTS' MOTION FOR APPROVAL OF SITE
ACQUISITION, SCHOOL CONSTRUCTION AND
FACILITY ABANDONMENT

February 24, 1977

* * * *

[4] DR. NOLAN ESTES,
one of the Defendants, being duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. WHITHAM:

* * * *

[5] Q And were you serving in that capacity on
April 7, 1976?

A I was.

Q And have you served in that capacity con-
tinuously since that period of time?

A Yes.

Q You are familiar with that particular order
entered by this Court of April 7, 1976 referred to
generally as the Final Order in the Dallas Independent
School District desegregation proceedings before this
Court?

A I am.

Q And have you been the School Administrator
primarily responsible for implementing that particular
Order?

A I have.

Q Pursuant to that Order did the Dallas Indepen-
dent School District order and thereafter conduct a
school bond election to provide for facilities, equipment
and school buildings?

A We did.

Q And when was that election held?

A On December 11th, 1976.

Q What was the amount of that bond issue sub-
mitted to the voters by the School District?

[6] A Eighty million dollars.

Q Did that bond issue successfully carry?

A It did by a great majority.

Q You don't happen to know the particular majori-
ty, do you?

A About twenty thousand voting for and ap-
proximately thirteen to fourteen thousand voting
against.

Q Are you familiar with the demographic patterns
within the School District insofar as parts of the city
supporting the bond issue and parts of the School Dis-
trict not supporting the bond issue?

A I am. We had, of course, the vast majority of all
precincts supporting the bond issue. We did have some
few sections, however, in older parts of the City that
generally do not favor any bond issue and did not favor
this one.

Q Generally speaking are you familiar with the
parts of the School District occupied by either black or
Mexican-American citizens?

A I am.

Q By and large did the bond issue pass in those
precincts occupied by blacks and Mexican-Americans?

A Yes, it did, through, I might add, through the
work of parents and patrons in those areas. In the East
Oak Cliff area, for instance, we had more than [7] three
thousand votes in the East Oak Cliff area for the bond

issue and three or four hundred against the bond issue, overwhelming support in the East Oak Cliff area.

And again in the South Dallas area, because of the fine work of our parents and patrons in that area, Mrs. Davis and others, it carried by an overwhelming majority in that area.

Q Now, has the School District pursuant to that bond election sold any amount of bonds to date?

A We have. We have sold thirty million dollars to date.

Q Now, with respect to the instant application now before the Court with respect to approval of the construction, site selection and facilities abandonment, are you familiar with that application filed in this Court on February 17th of this year?

A I am.

Q With the exception of the first item, the acquisition of the A. Harris Shopping Center, are each of the school buildings listed in that application currently being used to house students at the grade level as ordered by this Court on April 7th, 1976?

A They are.

* * * *

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DEFENDANTS' EXHIBIT NO. 11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, ET AL

versus No. CA-3-4211-C

NOLAN ESTES, ET AL

DALLAS INDEPENDENT SCHOOL DISTRICT
STUDENT ASSIGNMENT PLAN FOR
ELEMENTARY AND SECONDARY SCHOOLS

PART I.

1.1 Pursuant to the Court's request, the Board of Education of the Dallas Independent School District respectfully submits the following student assignment plan for the Dallas Independent School District. The Board of Education understands that the Court will hold a hearing on student assignment plans for the Dallas Independent School District. At that time, the School District will present testimony in explanation of this student assignment plan.

1.2 The Dallas Independent School District is no longer a predominantly Anglo student school system.

At this time the racial composition of the Dallas Independent School District as of December 1, 1975 is 41.1% Anglo, 44.5% Black, 13.4% Mexican-American and 1.0% Other. The ethnic composition of students in the Dallas Independent School District by grade level is:

Grade Level	Anglo	%	Black	%	Mexican-American	%	Other	%	Total
K	3254	34.8	4429	47.3	1595	17.0	87	.9	9365
1	4260	36.7	5274	45.5	1955	16.9	113	1.0	11602
2	4095	36.9	5080	45.7	1822	16.4	104	1.0	11101
3	3947	36.7	5056	46.9	1648	15.3	118	1.1	10769
4	3756	35.5	5098	48.1	1608	15.2	131	1.2	10593
5	4226	37.5	5251	46.6	1672	14.8	125	1.1	11274
6	4543	39.3	5394	46.6	1504	13.0	128	1.1	11569
7	4853	41.0	5356	45.2	1532	12.9	103	.9	11844
8	5039	42.2	5343	44.8	1438	12.1	115	1.0	11935
9	5231	43.5	5406	45.0	1286	10.7	100	.8	12023
10	5287	45.4	4943	42.5	1259	10.8	155	1.3	11644
11	4828	51.5	3526	37.5	936	10.0	93	1.0	9383
12	4704	58.7	2611	32.6	634	7.9	71	.8	8020
TOTAL	58023	41.1	62767	44.5	18889	13.4	1443	1.0	141122

1.3 For the purposes of the desegregation plan students shown in the category "Other" are included for mathematical statistical purposes in the category labeled "Anglo."

1.4 Students will be assigned to a school as hereafter provided by the applicable Part of this Plan.

DEFENDANTS' EXHIBIT NO. 13

HISTORICAL ENROLLMENT*

Dallas Independent School District

<u>Dates</u>	<u>Anglo</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>	<u>Mexican-American</u>	<u>Percent</u>	<u>Total</u>
October, 1969-70	97,131		52,531		13,606		
Kindergarten	- 28		- 271		- 94		
Total	97,103		52,260		13,512		162,875
October, 1970-71	95,133		55,648		13,945		
Kindergarten	- 121		- 1,036		- 216		
Total	95,012	- 2.2	54,612	+ 4.5	13,729	+ 1.6	163,353
October, 1971-72	86,548		57,394		15,154		
Kindergarten	- 66		- 1,455		- 269		
Total	86,482	- 9.0	55,939	+ 2.3	14,885	+ 8.4	157,306
October, 1972-73	78,560		59,643		15,909		
Kindergarten	- 126		- 2,383		- 514		
Total	78,434	- 9.3	57,260	+ 2.4	15,395	+ 3.4	151,089
October, 1973-74	73,042		62,468		17,141		
Kindergarten	- 3,439		- 3,575		- 1,276		
Total	69,603	- 11.3	58,893	+ 2.9	15,865	+ 3.1	144,361

224

(Continued below)

* HEW Report

<u>Dates</u>	<u>Anglo</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>	<u>Mexican-American</u>	<u>Percent</u>	<u>Total</u>
October, 1974-75	67,324		63,760		18,426		
Kindergarten	- 3,821		- 4,105		- 1,562		
Total	63,503	- 8.8	59,655	+ 1.3	16,864	+ 6.3	140,022
October, 1975	60,796		64,594		18,994		
Kindergarten	- 3,370		- 4,338		- 1,559		
Total	57,426	- 9.6	60,256	+ 1.0	17,435	+ 3.4	135,117
1969-70	97,103		- 52,260		- 13,512		
1975	- 57,426		60,256		17,435		
Total Loss	39,677	- 40.9	7,996	+ 15.3	3,923	+ 29.0	

225

DEFENDANTS' EXHIBIT NO. 17

DALLAS ALLIANCE

Minutes of a Called Board Meeting
 October 23, 1975, Zale Corporation,
 3000 Diamond Square, 3:30 P.M.
 (REVISED November 10, 1975)

I. CALL TO ORDER:

The Chairman (Jack Lowe, Sr.) called the meeting
 to order at 3:45 p.m.

II. PRESENT:

(1) George Allen, (2) Victor Bonilla, (3) George
 Brewer (4) Mario Cadena, (5) Charles Cullum, (6)
 Juanita Elder, (7) L. G. Foster, (8) Bryghte God-
 bold, (9) Walter Humann, (10) Ben Lipshy, (11)
 Jack Lowe (12) Rene' Martinez, (13) Roy Orr, (14)
 Catherine Perrine, (15) Randy Ratliff, (16)
 Hortense Sanger, (17) Chris Semos, (18) Louis
 Weber, Jr.

Twenty-one Trustees were not present:

(1) Helen Boothman, (2) J. K. Bryant, (3) Clyde
 Clark (4) David Cooley, (5) Roy Dulak, (6) Nolan
 Estes, (7) V. Alyce Foster, (8) David Fox, (9)
 Adlene Harrison, (10) Zan Holmes, (11) Bill

Hunter, (12) Don Jarvis, (13) Raymond Nasher,
 (14) William Pitstick, (15) George Schrader, (16)
 Judson Shook, (17) Cleophas Steele, (18) Lee
 Turner, (19) John Whittington, (20) W. W. Wilson,
 (21) Wes Wise

Also Present:

(1) Paul Geisel, (2) Fay Willis (3) Members of the
 Press

III. AGENDA:

PURPOSE OF THE MEETING

Jack Lowe stated the purpose of the meeting was
 to determine and discuss a course of action to take
 in developing a community-based school which
 would be educationally sound, would be a magnet
 system — where every child and parent could be a
 winner. Lowe described two meetings of a group
 of seven Black, seven Chicano, seven Anglo which
 met to establish a process to lead to such a plan. He
 pointed out the need expressed by the group that
 it be designated as a Task Force of the Alliance.

The understandings were to be that any member
 of the Task Force could withdraw at any time. The
 Alliance would provide professional and financial
 assistance; the group would act fairly
 autonomously because of time constraints; the
 board could withdraw support at any point as
 well.

DISCUSSION

The discussion indicated strong support for such action. Questions regarding the potential for success; the amount of time; the relationship of the process to the court suit were raised; the general concensus of the board members who had participated in the formation of the Task Force group was that it was (1) worth a try, (2) time was limited, and (3) the dream was that the plan would be so "right" that the community, the court, the school board and other litigants would accept it.

Lowe read five precepts that he had previously read to the proposed Task Force as guiding principles of any plan. Lowe said that these guidelines had not been worked over and approved by the Task Force but were his first draft of ideas that had been verbalized by various members of the Task Force. These precepts call for a plan that would:

- (1) Provide best possible education for each child.
- (2) Eliminate all vestiges of dual system.
- (3) Provide adequate accountability.
- (4) Contribute to a stable, integrated community.
- (5) Become a "Magnet" school district — so good

that people want to move into it, rather than out of it.

Following discussion, a motion was made to approve the formation of a Task Force of twenty-one. Motion carried.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Clyde Clark
Secretary-Treasurer

APPROVED BY THE BOARD

Jack Lowe, Chairman

ATTESTED:

Faye Willis

N.A.A.C.P.'S EXHIBIT NO. 2

* * *

GOALS

IT SHALL BE THE AIM OF THIS PLAN:

1. To make use of the positive elements that can be found in naturally intergrated neighborhoods and to enhance opportunities for persons in other neighborhoods in the development of programs which will provide quality education for all.
2. To enhance educational opportunities provided in Inner City Schools by the development of a superior educational program in each of these schools and to provide physical facilities of a quality and quantity commensurate with the needs.
3. To develop a plan of education that recognizes the diversity in populations and which will utilize these diversities to impact upon the intergrated whole for the entire district, which will include the upgrading and improvement of education in every school.
4. To develop a program of community involvement whereby the decision making body in the school system will have regular input, both system-wide and in each local school.

The Goals set out in this Plan are to be governed by the basic Guidelines outlined immediately below, in the plan for desegregation of the Dallas Independent School System and the change over or conversion to an unitary system. The following Guidelines should be adhered to as near as possible.

1. Every effort should be made to devise a fair, reasonable and stable Plan.

(a) Every school should have a racial balance comparable to the racial balance in the District, which will not deviate more than Ten Percent (10%) up or down.

(b) Do not transport students out of a neighborhood which is already intergrated, that is, one having the racial balance referred to in 1 (a), hereinabove. However, students may be bused into such areas, if necessary.

2. The first magnitude of desegregation and the attaining of an Unitary School System should be to achieve a racial balance of black and white students in each school and then follow through with the intergration of other minorities into the system.

3. Innovative programs and intensive involvement should be fostered in schools which are located in low income areas of the District and the Inner City Schools.

4. Fairness should be the central aim of any plan in terms of transporting students in and out of neighborhoods, the number of grades away from neighborhood schools or any other element of differential arrangement of facilities or programs. Fairness includes the number of students involved from each race.

5. Any set plan should have written into it automatic mechanisms for change based upon conditions which may arise in the community.

6. Every student, not living in an intergrated neighborhood should be bused at one time during his/her school career.

7. The primary aim should not be to create more compact geographical districts, but rather to involve the least number of students in a transportation plan as possible.

8. Explicit policies and procedures for the Management of future reassignment of pupils, either in the interest of the school system or on request of pupils, need to be formulated and adopted. Such policies are to fulfill the purpose of maintaining an intergrated Unitary School System with a stabilized assignment program.

9. Explicit policies and procedures for the Management of Admissions to any Optional Schools need to be formulated and adopted. They must provide for

District-Wide access to those schools as appropriately intergrated schools, and prevent any significant jeopardy to the Racial composition of any other school.

10. No children in any area close to a school are to be so assigned that they are transported away from their home area for the full twelve (12) years of school. Out-busing assignments are to be distributed as equally as it is possible and practical.

11. Where practical immediately, and where not, in the future, schools serving primary grades are to be located in every section of the System.

12. Adjustments and specific exceptions to the feeder sequence are to be effected to insure that each school serves its own immediate neighborhood unless there are compelling reasons to do otherwise at a specific school.

13. Monitoring procedures are to be so specified that assignment adjustments will be acted upon when trends of racial changes are noted. These procedures are to be made specific with respect to degrees of change and timing of remedial actions to be taken.

14. School planning is not to be predicated on population growth trends alone. Consideration is to be given to the influence new buildings can be toward simplification of an intergrated pupil assignment plan. Buildings are to be built where they can readily serve both races.

PLAINTIFFS' EXHIBIT NO. 16

Plaintiff's Desegregation Plans A and B

OVERVIEW

* * * *

9. Dunbar's special programs are retained under Plan B. Plan A reassigns all Dunbar students.
10. The Dallas Independent School District should resolve to improve the continuity of programs for students who move from school to school. Oftentimes there is very little follow-up of programs from school to school and gains made by students in programs offered in one school are lost when that student attends another school. With uniformity in feeder patterns improvement in program continuity should be possible.
11. It is recommended that the majority to minority transfer program be redefined and retained. Special efforts should be made to encourage white and Mexican-American students to transfer into Plan B's District 8 model cluster. In addition, transfer policies, other than majority to minority, should be devised to meet student needs consistent with the goal of desegregation.
12. The Dallas Independent School District should re-evaluate, with the goal of expanding and improv-

ing, inservice training programs for new and repeat faculty and staff. Special programs dealing with human relations, cross-cultural understanding, and improving communication skills should be formulated. Such programs are consistent with the Dallas Independent School District's obligation to eradicate "Institutional Racism" from its educational program. Similar efforts should be devised for parents and students to improve harmony and understanding between different cultures and races.

13. The Dallas Independent School District should examine the possibility of requiring faculty and staff to reside in the Dallas Independent School District and to have their children attend school in the Dallas Independent School District.
14. All new magnet schools, including career centers, should be constructed in the inner-city area to encourage the inward flow of students, particularly white students. The schools should seek the assistance of local businesses and citizens in order to acquire appropriate construction sites. Student enrollment in such facilities should approximate the ethnic enrollment of the Dallas Independent School District as a whole. Exceptions would include the elementary magnets created under Plan B.
15. The Dallas Independent School District's efforts at recruitment and hiring of minority faculty and staff has not kept pace with the growth of minority enroll-

ment. More minority faculty and staff should be recruited and employed.

16. Every effort should be made to enhance the involvement of parents and students in the operation of the schools. Visits and open houses should be scheduled to acquaint parents and students with the schools their children will attend under either Plan A or Plan B.

17. Improved means of accountability should be established in order to insure that Dallas Independent School District operations are consistent with any future court order and with the goal of a quality education for each student enrolled in public school. Such means could include: 1) enhancement in the authority and prestige of the Tri-Ethnic Committee including expanded powers, staff and mini-committees organized on the district and school level; 2) the selection of an ombudsman, representing the public, with staff and access to school information and personnel at all levels; 3) the establishment of a student and parent grievance procedure available for use to complain of school procedure and personnel. Although stated last, the student and parent grievance procedure is a most important element of any system of accountability.

* * * *

ELEMENTARY SCHOOLS — PLAN A

1. Elementary grades are K-6 district-wide.
2. Plan A divides the Dallas Independent School District into the following seven (7) attendance zone districts:

A1 Southwest Oak Cliff	A5 Northwest Dallas
A2 Southeast Dallas	A6 North Oak Cliff
A3 Pleasant Grove	A7 North-Dallas-Cedarcrest
A4 East Dallas	
3. The map shows that six (6) of these zones are contiguous. The North Dallas-Cedarcrest district is the only noncontiguous zone.
4. The racial make-up of each elementary district follows:

District	Total Pop.	A	%A	B	%B	MA	%MA	O	%O
A1	8282	3881	46.9	3348	40.4	998	12.1	55	.6
A2	10700	5075	47.4	5061	47.3	541	5.1	23	.2
A3	8821	3977	45.1	4199	47.6	620	7.0	25	.3
A4	11112	4785	43.1	5428	48.8	818	7.4	81	.7
A5	12158	4329	35.6	5627	46.3	2019	16.6	183	1.5
A6	12093	3348	27.7	4787	39.6	3800	31.4	158	1.3
A7	18174	6542	36	8514	46.9	2984	16.3	154	.8
Totals	81340	31937	39.3	36964	45.4	11760	14.5	657	.8

5. Each child attends elementary school within one and only one of these seven (7) districts. No child attends more than three (3) elementary schools from first through sixth grade.

6. Three (3) elementary schools are closed-Austin, Douglas and Juarez. Several elementary attendance zones are split, and several elementary schools house only kindergarten students. It is recommended that a study be conducted in order to determine the need to construct a new elementary school in West Dallas.

7. All students remain in their neighborhood school for kindergarten.

8. Thirteen (13) elementary schools were considered desegregated and were left alone. They are:

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School	A	%A	B	%B	MA	%MA	O	%O	Total
Blair	319	39.4	395	48.8	94	11.6	2		810
Bowie	140	27.3	136	26.6	213	41.6	23		512
Crockett	301	39.8	36	4.8	395	52.25	23	3.0	755
Kleberg	233	66.6	90	25.7	26	7.4	1	.3	350
Longfellow	68	27.9	167	68.4	6	2.5	3	1.2	244
Mt. Auburn	225	37.3	192	31.8	187	3	7	1.1	611
Peeler	125	30	29	7	247	59	18	4.3	419
Silberstein	283	67.4	123	29.3	13	3.1	0	0	419
Stevens Park	256	50	115	22.5	120	23.5	20	3.9	511
Terry	281	38.2	386	52.5	66	9.0	2	.3	735
Turner	339	58.9	231	40.1	2	.3	4	.7	576
Weiss	265	52.9	151	30.1	84	16.8	1	.2	501
Williams	107	47.4	83	36.7	32	14.2	4	1.8	226

SENIOR HIGH SCHOOLS — GRADES 10-12 DISTRICT-WIDE

1. Under Plan B the Dallas Independent School District is divided into fourteen (14) high school attendance zone areas.
2. The map shows nine of these districts are contiguous.
3. The racial make-up of each high school follows:

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School	A	%A	B	%B	MA	%MA	Total Students	Capacity
Bryan Adams	1699	51.3	1487	44.9	102	3.1	3311	3030
Adamson	578	47	173	14.1	446	36.3	1229	1300
Carter	955	60.2	467	29.5	150	9.5	1585	2000
Kimball	871	62.9	415	30	86	6.2	1384	2100
Lincoln	1266	59.4	804	37.7	36	1.7	2132	2100
North Dallas	307	29.9	275	26.8	421	41	1026	1100
Pinkston	1416	57.3	904	36.6	118	4.8	2473	3500
Roosevelt	1524	54.6	1190	42.6	64	2.3	2791	2500
Samuel	1775	54.9	1298	40.1	152	4.7	3233	3000
S. Oak Cliff	60	2.2	2677	96.3	42	1.5	2781	2600
Spruce	2024	66.9	908	30	88	2.9	3024	3000
Sunset	970	60.4	74	4.6	542	33.7	1606	1800
White	1292	54	779	32.6	298	12.5	2391	2600
Woodrow	612	55.1	312	28.1	173	15.6	1110	1440

4. Distance from the majority white areas, capacity of schools, DISD enrollment patterns and generally good physical facilities were factors resulting in South Oak Cliff retaining its present student assignment pattern.
5. In the thirteen (13) remaining high schools the Anglo percentages range from 29.9 to 66.9 so that each school has a white majority or plurality with the exception of North Dallas; Black percentages range from 4.6 to 44.9; Mexican-American percentages range from 1.7 to 15.6, except for Sunset which is 33.7, Adamson 36.3 and North Dallas 41%.
6. Each student attends only one (1) high school.
7. Skyline has no attendance zone and is open district wide for its special programs.
8. No high schools are closed but some are put to different use:

<u>School</u>	<u>Use</u>
Crozier	Magnet school for elementary B-5 District
Hillcrest	Magnet school for elementary B-4 District
Thomas Jefferson	Magnet school for elementary B-3 District
Seagoville	Use as junior high

* * * *

JUNIOR HIGH SCHOOLS—GRADES 7-9 DISTRICT-WIDE

1. Under Plan B the Dallas Independent School District is divided into twenty-three (23) junior high school attendance zone areas.
2. The map shows that nine of these districts are contiguous.
3. The racial make-up of each junior high is as follows:

School	A	%A	B	%B	MA	%MA	0	%0	Total	Capacity
Anderson	1057	50.6	937	44.9	88	4.2	5	.2	2087	2507
Atwell	871	62.9	415	30	86	6.2	12	.9	1384	1700
Browne	995	60.2	467	29.5	150	9.5	13	.8	1585	1700
Comstock	704	46.9	611	40.7	185	12.3	1	.1	1501	1700
Cary	664	49.6	516	38.6	133	9.9	25	1.9	1338	1600
Edison	93	11.2	110	13.2	626	75.2	4	.5	833	1000
Franklin	428	51.2	363	43.4	41	4.9	4	.5	836	1400
Florence	892	44.6	1043	52.2	60	3	3	.2	1998	1700
Gaston	816	48	763	44.9	108	6.4	12	.7	1699	1700
Greiner	548	45.3	151	12.5	476	39.3	35	2.9	1210	1300
Hill	489	50.4	439	45.3	36	3.7	6	.6	960	1400
Hood	1348	49.5	1276	46.9	70	2.6	29	1.1	2723	2500
Long	620	46.6	422	31.7	276	20.6	15	1.1	1333	1400
Madison	1344	52	1152	44.6	67	2.6	20	.8	2583	2100
Marsh	770	49.6	709	45.7	55	3.5	17	1.1	1551	1700
Rusk	580	40.3	380	26.4	456	31.7	24	1.7	1440	1300
Seagoville	556	49.5	540	48.1	25	2.2	2	.1	1123	1200
Sequoyah	729	49.9	675	46.2	55	3.8	2	.1	1461	1600
Spence	289	21.8	369	27.8	643	48.5	24	1.8	1325	1300
Stockard	928	61.9	74	4.9	474	31.6	24	1.6	1500	1500
Storey	56	2.5	2094	94.8	57	2.6	2	.1	2209	2500
Walker	650	50.9	566	44.3	54	4.2	7	.5	1277	2000
Zumwalt	4	.3	1533	99.1	10	.6	0	0	1547	?
Totals	15391		15605		4231		286		35513	

- Distance from majority white areas, capacity of schools, enrollment patterns in the DISD and generally good physical facilities were factors resulting in Storey and Zumwalt retaining their present student assignment patterns.
- In the remaining twenty-one (21) junior high schools the Anglo percentage range from 11.2 to 62.9; Black percentages range from 4.9 to 52.2%; Mexican-American percentage range from 2.2 to 48.5 with the exception of Edison which is 75.2%.
- Each student attends only one (1) junior high school.
- No junior high school is closed but some are put to different use.

part Jr. hi
 Edison part Magnet school for B-2 elementary district
 Holmes Magnet school for B-6 elementary district
 Hulcy Magnet school for B-1 elementary district
 Rylie Magnet school for B-7 elementary district

* * * *

ELEMENTARY SCHOOLS—GRADES K-6 DISTRICT-WIDE

- Plan B divides the Dallas Independent School District into the following eight (8) attendance zone districts:

District	Description	District	Description
B-1	Southwest Oak Cliff	B-5	East Dallas
B-2	North Oak Cliff	B-6	Pleasant Grove
B-3	Northwest Dallas	B-7	Southeast Dallas
B-4	North Dallas-Cedarcrest	B-8	South Oak Cliff

- The map shows seven (7) of the elementary districts are contiguous and reasonably compact. The North Dallas-Cedarcrest district is the only non-contiguous district.
- The racial make-up of each elementary district follows:

District	Total		A	%A	B	%B	MA	%MA	O	%O
	Pop.									
1	7272	3453	47.5	2697	37.1	1051	14.5	71	1	
2	8223	2928	35.6	755	9.2	4389	53.4	131*	1.6	
3	12381	5120	41.4	5147	41.5	1949	15.7	165	1.3	
4	8492	3686	43.4	3696	43.5	1049	12.4	61	.7	
5	14393	5463	38	6350	44.1	2383	16.6	197	1.4	
6	8609	3986	46.3	4169	48.4	418	4.9	36	.4	
7	9743	4015	41.2	4956	50.9	758	7.8	14	.1	
8	8493	113	1.3	8188	96.4	187	2.2	5	.05	
Totals	77006	28764	37.1	35958	46.3	12184	15.7	700	.9	

Figures used are dated "October 15, 1975 DISD Distribution Sheet".

- Distance from the majority white areas, capacity of schools, DISD enrollment patterns and generally better physical facilities were factors resulting in District B-8 retaining its present assignment patterns. This district consists of eight (8) elementary attendance zones containing twelve (12) elementary schools.
- In the remaining seven (7) districts the Anglo percentages range from 36 to 48; Black percentages range from 9 to 51; and the Mexican-American percentages range from 5 to 17, except for the North Oak Cliff District which is 53% Mexican-American.
- Each child attends elementary school within one (1) and only one (1) of the eight (8) districts. No child attends more than two (2) elementary schools from first through sixth grade.
- Three (3) elementary schools are closed-Austin, Douglas and Juarez. Ray and Central are used only for kindergarten students. The Macon attendance zone is split by district 6 and 7.
- All kindergarten students remain in their neighborhood schools.
- Thirty-nine (39) elementary schools are desegregated (no race comprises more than 70%) and are left alone. (see pages 248-249 of this appendix).

10. Each elementary school that had a predominately minority enrollment prior to the effective date of this proposal shall have special programs (as contained in magnet schools) to enhance the attractiveness of these schools as educational facilities. Prior to the effective date of this proposal these schools shall receive a thorough survey. Renovations shall take place, if necessary. Curriculums should be revised and enhanced.

11. 19,832 elementary students are transported for desegregation purposes. See table below.

District	District Total	A	B	MA	0
B-1	900	400	390	104	6
B-2	0	0	0	0	0
B-3	4248	1924	2057	225	42
B-4	3480	1582	1563	305	30
B-5	4686	2041	2175	399	71
B-6	3486	1561	1732	168	25
B-7	3032	1437	1462	127	6
B-8	0	0	0	0	0
Totals	19832	8945	9379	1328	180

12. Seven (7) districts have magnet schools which draw from only the district they serve. 60% of the enrollment must be Black and/or Mexican-American.

District	Magnet School	Maximum # of Students	Capacity
B-1	Hulcy	1000-1300	2000
B-2	Edison	1000	1500
B-3	Thomas Jefferson	1700	2200
B-4	Hillcrest	1500	2040
B-5	Crozier	1500	1800
B-6	Holmes	1750	2500
B-7	Rylie	750	800

?(possible space in Ervin)

* * *

K-5 ELEMENTARY SCHOOLS CONSIDERED DESEGREGATED (NO RACE IN
EXCESS OF 70%). FIGURES FROM 12/1/75 HINES COUNTY REPORT

School	A	%A	B	%B	MA	%MA	Total
Blair	288	34.3	449	53.5	103	12.3	840
Bowie	124	21.3	172	29.5	262	44.9	583
Buckner	101	12.1	149	66.8	47	21.1	223
Burleson	27	12.8	494	62.6	194	24.6	789
Carpenter	261	62.4	121	29	17	4.1	418
City Park	7	3.1	152	66.4	70	30.6	229
Cochran	256	48.2	155	29.2	117	22	531
Cowart	285	46	3	.5	319	51.5	620
Crockett	256	38.2	52	7.7	338	50.4	671
Davis	200	35.3	279	49.3	83	14.7	566
Donald	270	53.1	0	0	230	45.3	508
Foster	307	56.3	6	1.1	200	36.7	545
Hall	404	54.1	143	19.1	196	26.2	747
Henderson	294	53.9	116	21.3	125	22.9	546
Hogg	95	34.5	18	6.5	153	55.6	275
Hooe	320	59.4	2	.4	214	39.7	539
Houston	101	18.4	64	11.6	378	68.7	550
Jones	294	50.8	16	2.8	264	45.6	579
Kleberg	240	68.9	88	25.3	20	5.8	348
Knight	212	34.4	8	1.3	383	62.1	617

(Continued below)

School	A	%A	B	%B	MA	%MA	Total
Lee, R.	148	43.1	0	0	189	55.1	343
Lipscomb	298	50	22	3.7	252	42.3	596
Longfellow	68	31.3	143	65.9	7	3.2	217
Maple Lawn	126	24.4	112	21.7	252	48.7	517
Milam	46	33.3	20	14.5	67	48.6	138
Mt. Auburn	187	34.7	179	33.2	170	31.5	539
Peabody	170	41.7	1	.2	226	55.4	408
Peeler	115	26.9	26	6.1	273	63.9	427
Reagan	160	35.6	3	.7	271	60.4	449
Rosemont	371	60.6	45	7.4	184	30.1	612
Silberstein	243	58.6	146	35.2	24	5.8	415
Stevens Park	245	51.7	82	17.3	133	28.1	474
Terry	251	35.9	387	55.4	59	8.4	699
Turner	231	44.8	272	52.7	2	.4	516
Webster	433	57.8	277	37	38	5.1	749
Weiss	232	53.6	141	32.6	60	13.9	433
Williams	109	44.9	95	39.1	32	13.2	243
Winnetka	196	44.2	8	1.8	230	51.9	443
Juarez	6		32		107		147
Douglas	13		90		143		246
Lanier	56		66		373		503
	75	8.4	188	22.1	623	69.5	896
Total		*	*	*	Total		19,838

COURT'S EXHIBIT NO. 9

Dallas Alliance
Fidelity Union Tower
1507 Pacific Avenue
Dallas, Texas 75201

March 3, 1976

Honorable W. M. Taylor, Jr.
Chief United States District Judge
1100 Commerce Street
Dallas, Texas 75242

Dear Judge Taylor:

After further study of our plan and more consultation with DISD staff, the Dallas Alliance Education Task Force met on March 2, 1976 and adopted modifications to our plan. The revised plan is attached for your consideration, with the changes underlined.

Our estimate of the annual DISD operating cost increases, excluding transportation costs, is \$5,000,000. This estimate does include start-up costs and should decrease after the first year. Our estimate of capital expenditure is \$16,500,000. Our understanding is that the present bond issuance capability of DISD without tax increase, could accommodate this capital expenditure.

DALLAS ALLIANCE EDUCATION TASK FORCE

/s/ JACK LOWE, SR.

Jack Lowe, Sr., Chairman
Atts . . .

(Filed: Mar. 3, 1976)

HALL'S EXHIBIT NO. 5

A POTENTIAL PLAN FOR COMPLIANCE WITH
RULINGS FOR OPERATING SCHOOLS IN
DALLAS, TEXAS

* * * * *

Schools Now Meeting Criteria

251

<u>School</u>	Elementary Schools						<u>Total</u>	<u>Bldg. Cap.</u>
	<u>Anglo</u>		<u>Black</u>		<u>M-A</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>		
1. Arcadia Park K-6	273	74.4	2	.5	92	25.1	367	400
2. Blair, W. A. K-6	281	35.3	419	52.5	97	12.2	797	800
3. Bowie, James K-6	154	28.7	146	27.3	236	44.0	536	800
4. Burnet, David G. K-7	707	73.9	36	3.8	214	22.3	957	1,350
5. Carpenter, J. W. K-6	274	68.5	110	27.5	16	4.0	400	800

(Continued on next page)

School	Anglo		Black		M-A		Minority		Total		Bldg. Cap.
	No.	%	No.	%	No.	%	No.	%			
6. Central 5-6	228	84.8	23	8.5	18	6.7			269		300
7. Cochran, Nancy J. K-7	256	47.4	157	29.1	127	23.5		52.6	540		800
8. Cowart, Leila P. K-7	331	49.7	2	.3	333	50.		50.3	666		800
9. Crockett, David K-7	312	42.5	52	7.1	370	50.4		57.5	734		400 (P-360)
10. Davis, Jefferson K-6	210	37.5	274	48.9	76	13.6		62.5	560		800
11. Donald, L. O. K-7	331	57.3	-0-	-0-	247	42.7		42.7	578		800
12. Field, Tom W. K-7	154	75.1	10	4.9	41	20.0		24.9	205		500
13. Foster, Stephen K-7	379	61.7	8	1.3	227	37.0		38.3	614		800
14. Hall, Lenore K. K-7	493	58.6	141	16.8	207	24.6		41.4	841		800
15. Henderson, Margaret K-6	320	59.6	115	21.4	102	19.0		40.4	537		800
16. Hogg, James S. K-7	114	40.1	23	8.1	147	51.8		59.9	284		400
17. Hooe, Lida K-7	378	60.5	4	.6	243	38.9		39.5	625		500 (P-120)
18. Ireland, John K-7	403	71.3	108	19.1	54	9.6		28.7	565		800

252

(Continued below)

School	Anglo		Black		M-A		Minority		Total		Bldg. Cap.
	No.	%	No.	%	No.	%	No.	%			
19. Jones, Anson K-6	285	52.4	15	2.8	241	44.8		47.6	544		400 (P-150)
20. Kleberg K-6	236	69.9	82	24.2	20	5.9		30.1	338		300 (P-120)
21. Knight, Obadiah K-7	250	36.6	7	1.0	426	62.4		63.4	683		650
22. Lipscomb, Wm. K-7	379	56.7	20	3.0	269	40.3		43.3	668		800
23. Maple Lawn K-7	169	29.3	118	20.5	290	50.2		70.7	577		700
24. Milam, Ben K-7	60	36.0	10	6.0	97	58.0		64.0	167		800
25. Mount Auburn K-7	211	34.3	215	35.0	189	30.7		65.7	615		700
26. Peabody, George K-7	226	47.0	-0-	-0-	255	53.3		53.3	481		500
27. Peeler, John F. K-7	145	31.5	27	5.9	287	62.6		68.5	459		400 (P-120)
28. Reagan, John H. K-7	203	39.9	-0-	-0-	306	60.1		60.1	509		400 (P-120)
29. Rosemont K-7	450	64.4	53	7.6	196	28.0		35.6	699		750
30. Seagoville K-4	553	83.6	82	12.3	27	4.1		16.4	662		600 (P-90)
31. Silberstein, A. S. K-7	286	59.5	166	34.5	29	6.0		40.5	481		800

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(Continued on next page)

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
32. Stemmons, Leslie K-6	601	74.2	81	10.0	128	15.8	25.8	810	800 (P-60)
33. Stevens Park K-7	267	55.2	89	18.4	128	26.4	44.8	484	800
34. Terry, T.G. K-6	252	36.8	375	54.7	58	8.5	63.2	685	800
35. Turner, Adelle K-6	243	47.8	262	51.6	3	.6	52.2	508	800
36. Webster, Daniel K-6	423	59.0	255	35.6	39	5.4	41.0	717	800
37. Weiss, Martin K-6	226	52.3	144	33.3	62	14.4	47.7	432	800
38. Williams, Sudie K-7	113	48.1	90	38.3	32	13.6	51.9	235	800
39. Winnetka K-7	231	46.1	11	2.2	259	51.7	53.9	501	400 (P-120)
40. Mark Twain K-6	90	18.5	385	79.4	10	2.1	81.5	485	800
41. Lee, Robt. E. K-7	252	52.9	-0-	-0-	224	47.1	47.1	476	800
Junior High Schools									
42. Atwell, Wm. H. 7-9	362	34.8	645	61.8	36	3.4	65.2	1,043	1,700
43. Browne, T.W. 7-9	904	47.4	862	45.2	141	7.4	52.6	1,907	1,700 (P-240)
44. Cary, E.H. 8-9	739	43.7	636	37.6	316	18.7	56.3	1,691	1,500

(Continued below)

School	Anglo		Black		M-A		Minority	Total	Bldg. Cap.
	No.	%	No.	%	No.	%			
45. Comstock, E.B. 7-9	699	53.6	420	32.2	185	14.2	46.4	1,304	1,700
46. Greiner, W.E. 7-9	634	52.1	165	13.6	418	34.3	47.9	1,217	1,300
47. Hulcy, D.A. 7-9	248	18.6	1,038	77.7	50	3.7	81.4	1,336	2,500
48. Long, J. L. 8-9	549	52.8	192	18.5	299	28.7	47.2	1,040	1,400
49. Stockard, L. V. 7-9	687	62.9	58	5.3	347	31.8	37.1	1,092	1,400
Senior High Schools									
50. Carter, David W. 10-12	542	31.4	1,118	64.8	66	3.8	68.6	1,726	2,000
51. Jefferson, T. 10-12	1,118	60.7	375	20.3	350	19.0	39.3	1,843	2,100
52. Kimball, J. F. 10-12	1,212	68.0	421	23.6	150	8.4	32.0	1,783	2,100
53. Seagoville 7-12	827	80.2	157	15.2	47	4.6	19.8	1,031	750 (P-960)
54. Spruce, H. Grady 10-12	1,170	69.6	367	21.8	145	8.6	30.4	1,682	3,000
55. Sunset 10-12	1,115	69.7	110	6.9	375	23.4	30.3	1,600	1,800
56. Wilson, Woodrow 10-12	657	62.3	178	16.9	219	20.8	37.7	1,054	1,500

Junior High Schools are underlined. Schools listed under each are feeder schools into these centers.

William H. Atwell

Marsalis, T. L.
Terry, T. G.
(North of Camp)
Turner, Adelle
Twain, Mark

T. W. Browne

Carpenter, John
Davis, Jeff
Russell, C. P.
(West of Marsalis)
Stemmons, Leslie
Webster, Daniel

Edward H. Cary

Burnet, David G.
Caillet, T. F.
Field, Tom
(South of Royal)
Foster, Stephen C.
Houston, Sam
Knight, Obadiah
Longfellow, Henry W.
Maple Lawn
Polk, K. B.
Walnut Hill
Williams, Sudie

E. B. Comstock

Adams, John Q.
(West of Loop 12)
Blair, W. A.
Burleson, Rufus C.
Dorsey, Julius
Ireland, John
(S. of Lake June)
Lagow, Richard
Macon, B. H.
(S. of Elam)
Moseley, Nancy

J. L. Long

Bayles
Bonham, James B.
Crockett, David
Fannin, James
Lakewood
Lee, Robert E.
Lipscomb, William
Milam, Ben
Mount Auburn
Roberts, D. M.
Sanger, Alex
(W. of St. Francis)
Travis, William B.
Washington, B. T.

W. E. Greiner

Bowie, James
Hogg, James
Hooe, Lida
Henderson, Margaret B.
Peeler, John F.
Reagan, John H.
Rosemont
Stevens Park
Winnetka

D. A. Hulcy

Alexander, Birdie
Lee, Umphrey
Terry, T. G.
(S. of Camp Wisdom)
Thornton, R. L.
Weiss, Martin

L. V. Stockard

Aradia Park
Cochran, Nancy
Coward, Lelia P.
Donald, L. O.
Hall, L. K.
Jones, Anson
Peabody, George

Senior High Schools are underlined. Schools listed under each are feeder schools into these centers.

David W. Carter

Alexander, Birdie
Lee, Umphrey
Marsalis, T. L.
Terry, T. G.
Thornton, Robert L.
Turner, Adelle
Twain, Mark
Weiss, Martin

H. Grady Spruce

Adams, John Q.
(S. of Lake June)
Anderson, William M.
Blair, W. A.
Buckner, R. C.
Burleson, Rufus C.
Dorsey, Julius
Ireland, John
(S. of Lake June)
Lagow, Richard
Macon, B. H.
Moseley, Nancy
Runyon, John
Thompson, H. S.

Thomas Jefferson

Burnet, David G.
 Caillet, F. P.
 Field, Tom
 (S. of Royal)
 Foster, Stephen C.
 Houston, Sam
 Knight, Obadiah
 Longfellow, Henry W.
 Maple Lawn
 Polk, K. B.
 Walnut Hill
 Williams, Sudie L.

Justin F. Kimball

Carpenter, John
 Cochran, Nancy J.
 Davis, Jeff
 Donald, L. O.
 Hall, L. K.
 Russell, C. P.
 (W. of Marsalis)
 Stemmons, Leslie
 Webster, Daniel

Seagoville

Central
 Kleberg
 Seagoville

Comment 1:

Only 8 elementary schools do not fully meet the 30-75 combined minority percent criterion:

1. Arcadia Park, 25.6
2. David G. Burnet, 26.1

Sunset

Arcadia Park
 Bowie, James
 Cowart, Lelia P.
 Henderson, Margaret B.
 Hogg, James
 Hooe, Lida
 Jones, Anson
 Peabody, George
 Peeler, John F.
 Reagan, John H.
 Rosemont
 Stevens Park
 Winnetka

Woodrow Wilson

Bonham, James B.
 Crockett, David
 Fannin, James W.
 Lakewood
 Lee, Robert E.
 Lipscomb, William
 Milam, Ben
 Mount Auburn
 Roberts, Oran M.

3. Central, 15.2
4. Tom W. Field, 24.9
5. John Ireland, 28.7
6. Seagoville, 16.4
7. Leslie Stemmons, 25.8
8. Mark Twain, 81.5

Except for Numbers 3 and 6, they are considered as *approximately* meeting criterion. Numbers 3 and 6, Central and Seagoville, are located in the Seagoville area and fall under Criterion 5 as being located too far from other schools to make transportation practical, and they do have pupils from all ethnic groups.

Comment 2:

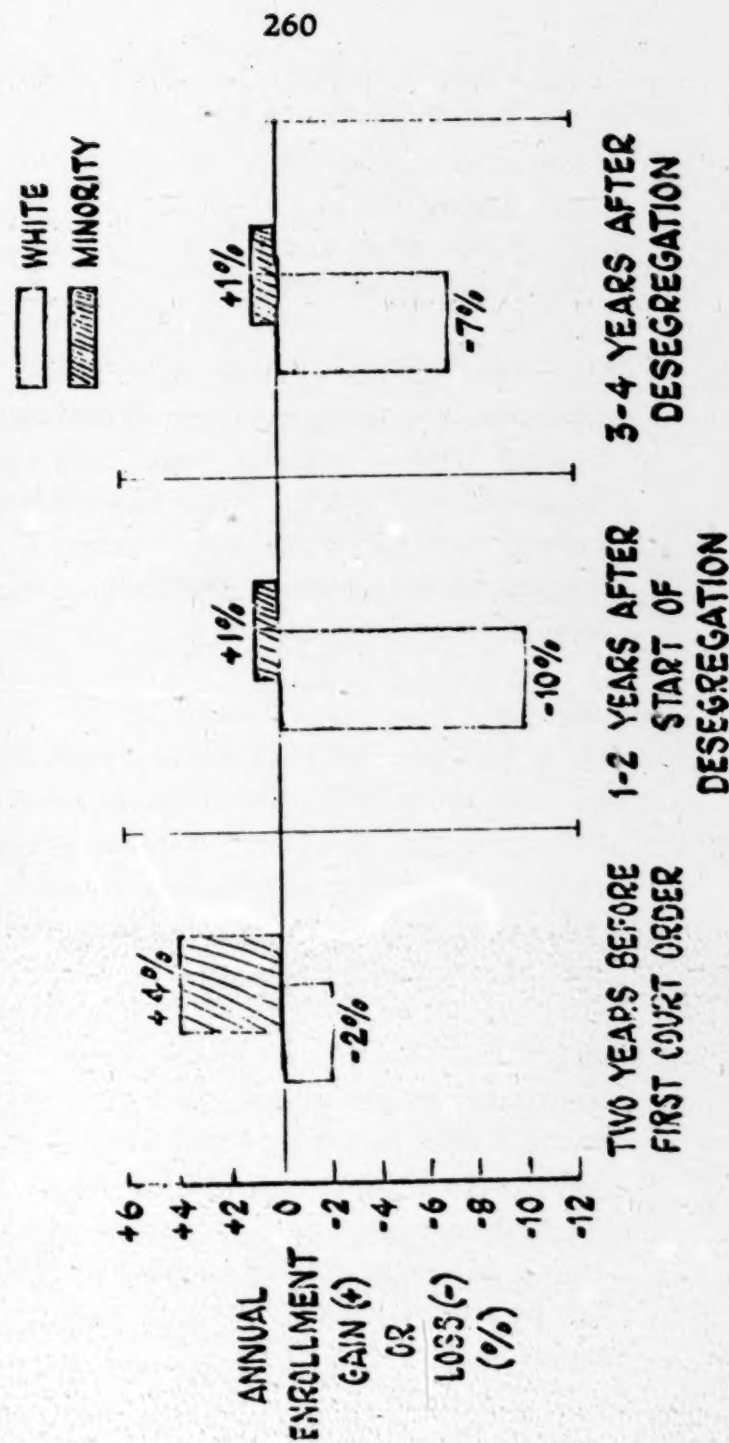
D. A. Hulcy Junior High School, with a combined minority of 81.4% approximately meets the 30-75% criterion. Seagoville (Grades 7-12), with a combined minority of 19.8, has the same problem as Central and Seagoville Elementary Schools, and the same comment applies.

Comment 3:

A number of the schools, 20 with less than 10% black, 5 with less than 4% Mexican-American, do have no or little representation from one of the minority groups. There appears to be no denial of rights, however. Reenforcement of this principle can be given with a majority-to-minority transfer policy.

CURRY EXHIBIT NO. 6

CHANGE IN ENROLLMENT BEFORE AND AFTER
COURT-ORDERED MANDATORY DESEGREGATION: 16 TARGET SCHOOLS



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TARGET SCHOOL DISTRICTS

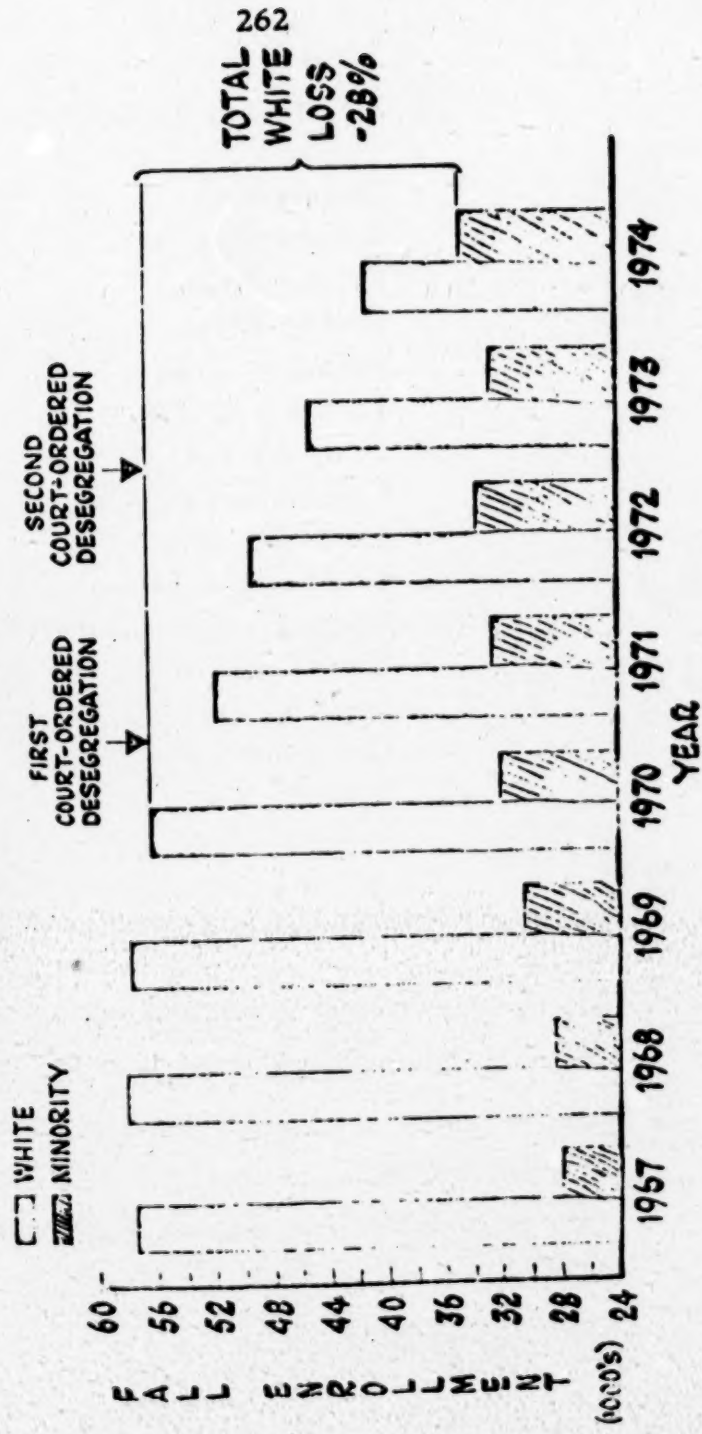
Denver, Colo.
Indianapolis, Ind.
Pontiac, Mich.
Boston, Mass.
Pasadena, Calif.
Fort Worth, Tex.
Houston, Tex.
Oklahoma City, Ok.
Nashville, Tenn.
Chatanooga, Tenn.
Prince Georges County, Md.
Little Rock, Ark.
Norfolk, Va.
Greensboro, N.C.
Raleigh, N.C.
Jackson, Miss.

All have the following characteristics:

- (1) Court-ordered mandatory busing
- (2) Enrollment over 20,000 as of Fall, 1968
- (3) Minority proportion between 20-50% prior to busing
- (4) Availability of developed suburbs outside district

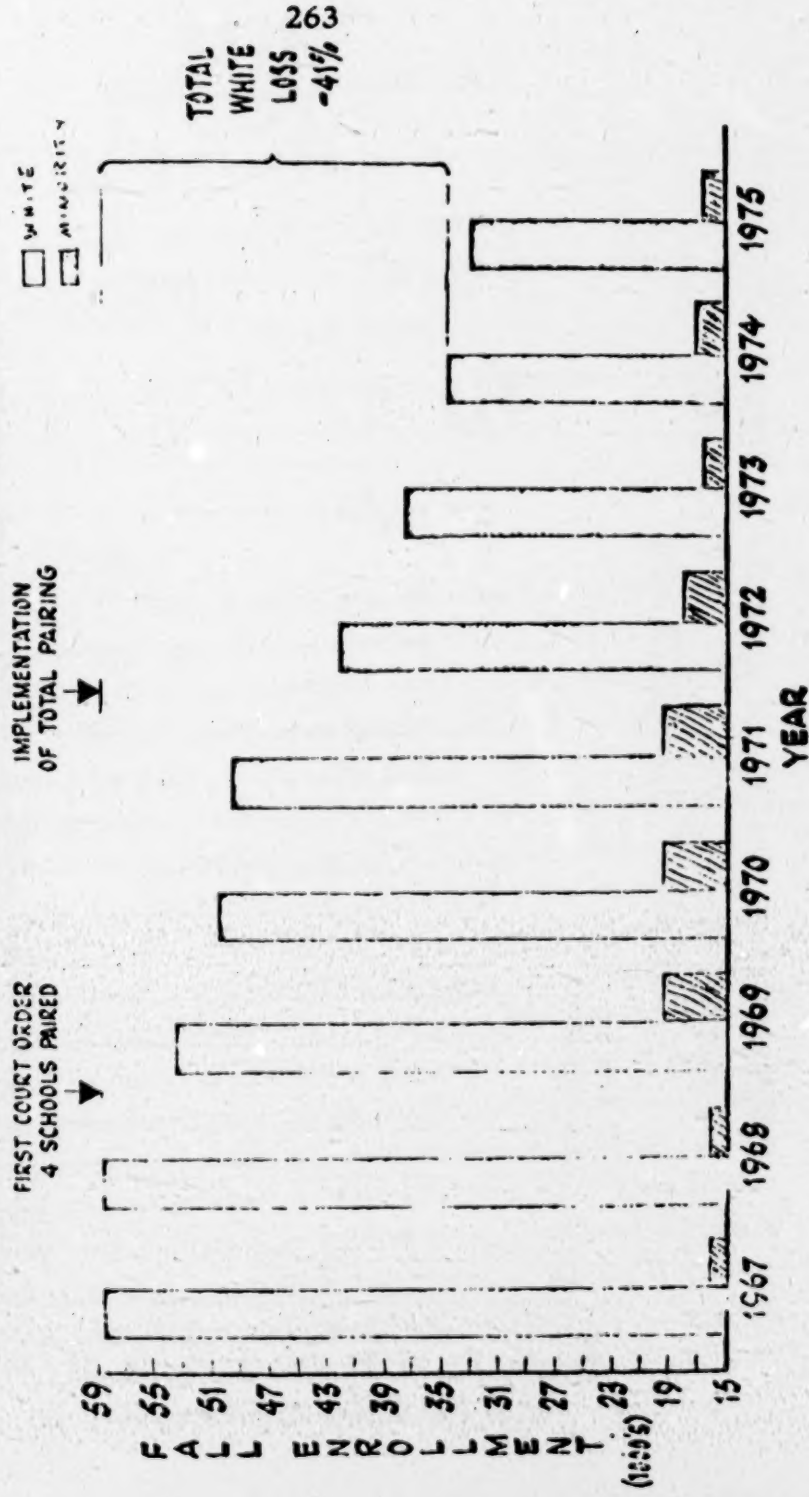
CURRY EXHIBIT NO. 7

ENROLLMENT OF WHITE AND MINORITY STUDENTS
IN FORT WORTH BEFORE AND AFTER COURT-ORDERED
MANDATORY DESEGREGATION

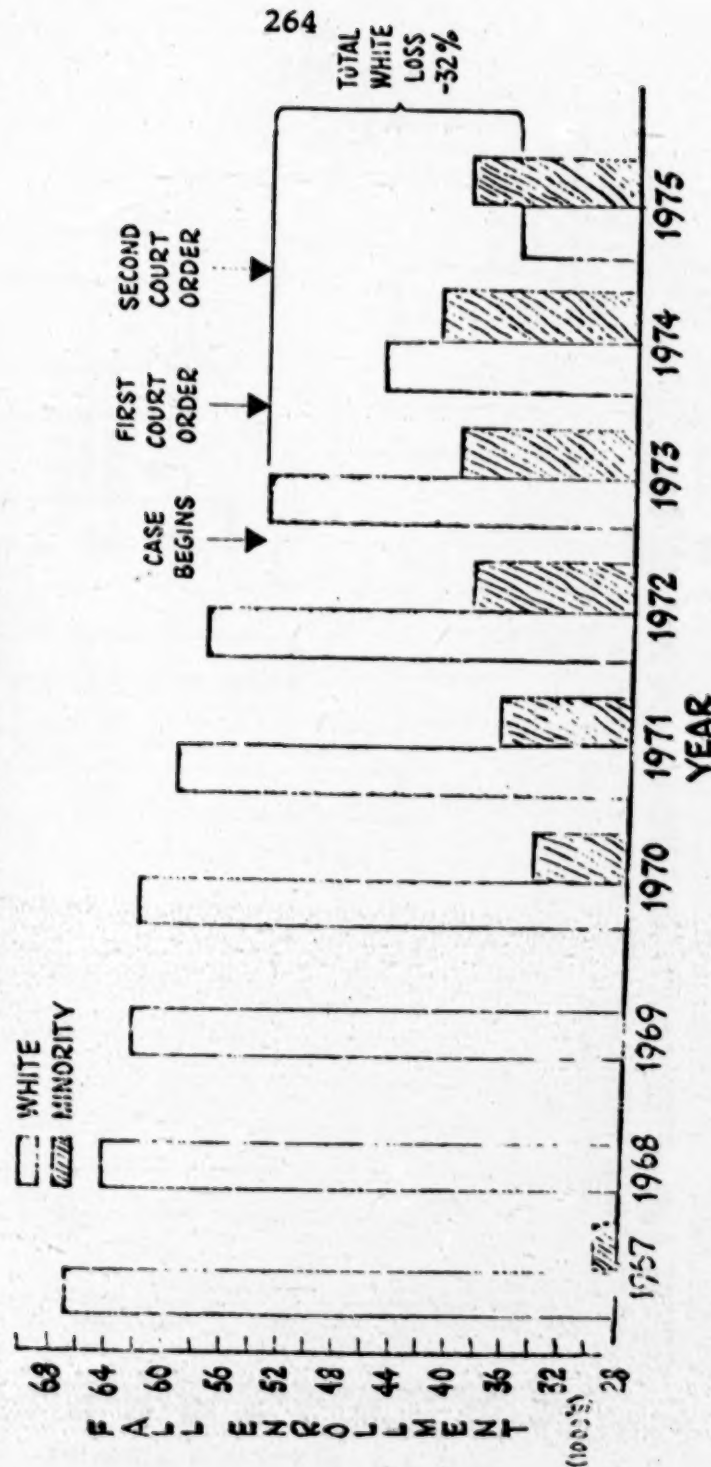


CURRY EXHIBIT NO. 8

ENROLLMENT OF WHITE AND MINORITY STUDENTS IN OKLAHOMA CITY
BEFORE AND AFTER COURT-ORDERED MANDATORY DESEGREGATION



CURRY EXHIBIT NO. 9
 ENROLLMENT OF WHITE AND MINORITY STUDENTS
 IN BOSTON BEFORE AND AFTER COURT-ORDERED
 MANDATORY DESEGREGATION



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BRINEGAR'S EXHIBIT NO. 6

EAST DALLAS DEMONSTRATION

a joint program of the
 citizens & the city government

city of dallas

department of housing & urban rehabilitation/
 department of urban planning

SUMMARY

The East Dallas Community, like the other innercity communities, has been experiencing a loss of middle and upper-income families, particularly the Anglos since 1960. School enrollment among Anglos has declined by 80% within the last six years. Unlike the Anglo students, Spanish surname and black student enrollment in elementary schools in East Dallas Community has increased by 102% and 75% respectively within the same period of time. This statistical fact proves the point of minority in-migration in the East Dallas Community. East Dallas Community has a higher percent of elderly population, mortality rate, illegitimate birth rate, single, separated, divorce, widow, families with female heads, families and unrelated individual below poverty level than the City. East Dallas Community also has higher percentage of housing units lacking plumbing facilities, units built before 1939, elderly homeowners, and vacancy rate than the City. East Dallas Community has experienced a greater increase in part I crime than the City.

TABLE 6

ENROLLMENT IN EAST DALLAS SCHOOLS: 1968-1975

School Year	Anglo	Spanish Surname	Black	Indian	Oriental	All Races
<u>Elementary</u>						
68-69	3,113	1,064	827	32	5	5,041
74-75	1,308	2,155	1,450	34	7	4,954
Change in No.	- 1,805	1,091	623	2	2	- 87
in %	- 58.0	102.5	75.3	6.2	40.0	- 1.7
<u>Jr. High</u>						
68-69	1,232	444	510	7	5	2,198
74-75	951	688	416	11	6	2,072
Change in No.	- 281	244	- 94	4	1	- 126
in %	- 22.8	55.0	-18.4	57.1	20.0	- 5.7
<u>Sr. High</u>						
68-69	1,546	79	23	2	4	1,654
74-75	702	157	191	5	4	1,059

(Continued below)

School Year	Anglo	Spanish Surname	Black	Indian	Oriental	All Races
Change in No.	- 844	78	168	3	0	- 595
in %	- 54.6	98.7	730.4	150.0	0.0	- 36.0
<u>Total</u>						
68-69	5,891	1,587	1,360	41	14	8,893
74-75	2,961	3,000	2,057	50	17	8,085
Change in No.	-2,930	1,413	697	9	3	- 808
in %	- 49.7	89.0	51.2	22.0	21.4	- 9.1

Note: See Map 3 for the school boundaries, which cover areas outside East Dallas. Junior and Senior enrollment has been affected by busing since 1971.

Source: Dallas Independent School District

PROOF OF SERVICE

We, Warren Whitham and Mark Martin, Attorneys for Petitioners Estes, et al., in No. 78-253, and members of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of May, 1979, we served three copies of the foregoing Appendix upon the following Counsel for Petitioners and Respondents:

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and to the following Counsel for Amicus Curiae:

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Dallas, Texas 75201

by mailing same to such Counsel and Respondent pro se at their respective addresses and depositing the same in a United States mail box in an envelope properly addressed to such addresses with first class postage prepaid.

We further certify that all parties required to be served have been served.

Warren Whitham

Mark Martin

Attorneys for Petitioners
Estes, et al. in No. 78-253

SEP 19 1978

RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. **78-253**

NOLAN ESTES, et al.,

Petitioners,

—versus—

OAK CLIFF BRANCH, SOUTH DALLAS BRANCH
AND JOHN F. KENNEDY BRANCH OF THE
METROPOLITAN BRANCHES OF DALLAS, NAACP,**78-282***Respondents,*

and

RALPH F. BRINEGAR, et al.,

Petitioners,

—versus—

OAK CLIFF BRANCH, SOUTH DALLAS BRANCH
AND JOHN F. KENNEDY BRANCH OF THE
METROPOLITAN BRANCHES OF DALLAS, NAACP,**78-283***Respondents,*

and

DONALD R. CURRY, et al.,

Petitioners,

—versus—

OAK CLIFF BRANCH, SOUTH DALLAS BRANCH
AND JOHN F. KENNEDY BRANCH OF THE
METROPOLITAN BRANCHES OF DALLAS, NAACP,*Respondents.***BRIEF IN OPPOSITION TO CERTIORARI**

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<i>U.S. v. Louisiana</i> , 389 U.S. 145 (1956)	10

IN THE
Supreme Court of the United States

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NOLAN ESTES, et al.,

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METROPOLITAN BRANCHES OF DALLAS, NAACP,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI

Opinions Below

The remand opinion of the United States Court of Appeals for the Fifth Circuit now at issue appears as the Appendix C to the Petition of Nolan Estes, et al., at pages 130a-146a, and reported at 572 F.2d 1010. Other opinions, orders and judgments of the District Court are found in Appendix B to Petition of Estes, pp. 4a-129a.

For a full listing of other opinions, rulings and judgments, see 512 F.2d 92, 95 (5th Cir.), cert. denied, 423 U.S. 939 (1975).

Jurisdiction

The Court of Appeals' judgment remanding the pupil assignment portion of a school desegregation plan for the elimination of de jure segregation to the District Court, was entered on April 21, 1978. This court's certiorari jurisdiction is invoked under 28 U.S.C. 1254.

Question Presented

Whether any issue warranting this Court's review is presented by the Court of Appeals' remand of the case to the District Court for the formulation of a new student assignment plan for an unremedied statutory dual system, along with instructions to consider the feasibility of adopting *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1 (1971) desegregation tools or to make specific findings of facts in connection therewith.

Statement

Negro children and their parents have sought the desegregation of the Dallas Independent School District (DISD) since July, 1955 when an action was brought to desegregate the facilities of DISD.¹ After extensive litigation, including appeals, the law of this case is that DISD is a state-imposed dual school system.² Remedial steps to dismantle the segregated condition were ordered by the Fifth Circuit, *Tasby v. Estes*, 517 F.2d 92 (5th Cir. 1975), cert. denied, 424 U.S. 939 (1975). On remand this respondent was allowed to intervene on behalf of the Metropolitan Branches of the Dallas NAACP and individual parents and children to participate in the remedial phase. *Tasby v. Estes*, 412 F.Supp. 1192 (N.D. Tex. 1976). From the district court's approval of a plan respondents appealed on the ground the "plan" approved by the district court did not meet minimum constitutional standards.³ *Swann v. Charlotte-Mecklenburg Board of Educ.*, 402 U.S. 1 (1971); *Green v. Co. School Bd. of New Kent Co.*, 391 U.S. 403 (1968); *Davis v. Bd. of School Commissioners of Mobile*, 402 U.S. 33 (1971).

The Court of Appeals found that the plan divided DISD into six subdistricts, one of which is nearly all black and contains only one-race schools. It has 27,500 students attending sixteen schools. (A one-race school was defined as

¹ For a chronology of this litigation, see *Tasby v. Estes*, 517 F.2d 92, 95 (5th Cir.), cert. denied, 423 U.S. 939 (1975).

² As the Court of Appeals noted at fn. 18, "Even after the Supreme Court's decision in *Brown v. Board of Education*, 349 U.S. 294 (1955), Texas laws required segregation. The penalties for violating the statutes included loss of funding and accreditation. 412 F. Supp. at 1189.

³ Under the present plan in operation since 1975 seventy-three (73) one-race schools remain segregated. Of these fifty-nine (59) are elementary schools, six 4-8 schools and eight 9-12 high schools. *Tasby*, 572 F.2d 1010 at 1012.

one with a student body with approximately 90% or more of the students being either Anglo or combined minority races.) In the other five subdistricts, containing some 160 schools, over fifty are still essentially one-race schools.

Furthermore, the Court of Appeals found that the district court's order leaves high school students in the neighborhood schools. Within three of the four integrated subdistricts (exclusive of East Oak Cliff, the black subdistrict, and Seagoville, the one predominately Anglo subdistrict), this results in high schools that are still one-race schools.

Moreover, contrary to *Swann*, 402 U.S. at 26-27, the district court's order placed the burden of transporting children participating in the majority to minority transfer option, on students and parents rather than on the school board.

After a thorough analysis of the components of the desegregation plan adopted by the district court, the Fifth Circuit again remanded the student assignment portion for further consideration. The remand order required the district court to modify the student assignment plan *only* if the continued existence of one-race schools is not justified by findings of facts. *Tasby v. Estes*, 572 F.2d 1010 (5th Cir. 1978), Petitioners applied for a rehearing and rehearing *en banc*. Both were denied by the Fifth Circuit on May 22, 1978. Defendants' Appendix D. *Estes* Petitioners moved for a stay of mandate pending certiorari and same was denied by the Court of Appeals on August 14, 1978. A Petition for Certiorari together with an Application for Stay were filed with this court. The latter was referred to Mr. Justice Powell who denied same in Chambers.⁴

⁴ Two other issues were appealed by respondents, i.e. the exclusion of Highland Park Independent School District from the desegregation plan and the acquisition and sale of certain property.

Reasons Why the Writ Should Be Denied

A. The *Swann* Mandate

All of the petitioners⁵ are attempting an end run to this court around the clear and common-sense remand direction of the Court of Appeals. That court held that a remand was necessary because:

"We cannot properly review any student assignment plan that leaves many schools in a system one-race without specific findings by the district court as to the feasibility of these techniques There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing. 572 F.2d at 1014. (Other citations omitted)

Such a remand was required by this court's holding in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), that where *de jure* segregation is found to exist one-race schools are subject to strict scrutiny because:

[W]here the school authority's proposed plan for conversion from a dual school system to a unitary system contemplates the existence of some schools that are all of predominately one-race, *they* have the burden of showing that such school assignments are genuinely non-discriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial

⁵ The issues raised by *Brinegar* petitioners and the *Curry* petitioners in their petitions for certiorari will be treated in this section.

composition is not the result of present or past discriminatory action on their part. *Swann*, 402 U.S. at 26.

The Court of Appeals found as a fact that the DISD acknowledged the harmful effect of one-race schools upon "the finding of a unitary system." It also noted that the district court had failed to make the specific findings as to why these schools could not be desegregated using and adopting the techniques approved in *Swann*. This failure by the district court impaired the ability the reviewing court to properly evaluate the plan. Consistent with the holding in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), 53 L.Ed.2d 851, 97 S.Ct. 2766 the Court of Appeals remanded for the findings of appropriate facts. As Mr. Justice Rehnquist wrote in *Dayton*, a basic significance of *Dayton* was its holding with respect to the proper allocation of functions for factual determination by district courts and their review by appellate courts.

The Court of Appeals was the appropriate tribunal in position to determine whether a fact circumstance was in sufficient posture for an appellate evaluation. Also, the remand here must be read in the context of the history of this 21 year old litigation. On several occasions during the life of this case the district court has been advised to invoke the *Swann* inquiry with respect to one-race schools with respect to this statutorily created dual system and to assay the feasibility of the assignment methods which should be considered, or, in the alternative, to make appropriate findings.

Once again, the district court has neither made those specific feasibility findings, nor has it ordered the utilization of the *Swann* desegregative tools. It is clear that without such findings of fact by the district court, the Court of

Appeals is unable to review the judgment or ascertain whether the school district has met the *Swann* burden of justification, i.e. lack of feasibility in assigning children so as to eliminate the dual system, or that the segregation was not the result of present or past discriminatory action.

The only justification advanced by the petitioners and which they implore this court to adopt are (1) there is a majority of minority students in the system, and that (2) the system is large, (3) that they have devised "innovative" plans, and (4) "white flight" will result if total desegregation is ordered.

Petitioners submit that such assertions do not rise to the level of *Swann*-required justification. They are constitutional irrelevancies. At this point, to the extent that facts have not been found, they cannot be reviewed. To the extent they are unreviewed by the Court of Appeals they are not in a posture for consideration by this Court, *Dayton v. Brinkman*, 433 U.S. 407. To the extent the petitioners assert legal principles which run contra to the unanimous holdings of this Court the Court of Appeals has no duty to adopt them. Indeed it is dutybound to reject them.

Petitioners argue as though *Brown v. Board of Education* had never been decided and that *Cooper v. Aaron's* lesson has no application today. *Brinegar* petitioner, for instance, suggest that popular acceptance of a plan somehow relaxes the constitutional imperative to eliminate *de jure* segregation from the Dallas school system. *Brown* and *Cooper v. Aaron* have been reaffirmed time and again as controlling, i.e. that disagreement with desegregation is no justification for thwarting it.

Brinegar petitioners, in grabbing at every straw, argue that the district court should be required to make *Davis*,

Austin and *Brinkman* findings on the subject of intent. The simple fact is that the law of the case is that DIDS is a *de jure* segregated system, which has never rid itself of the unconstitutional duality.

Segregation in Texas, unlike in Ohio, was mandated by law until after 1954. The Court of Appeals and the District Court have already found that segregation is state imposed, that the segregated schooling in Dallas has never been eliminated and that there still exists a current condition of racial segregation. The lower courts have held that this dual system has been perpetuated through constitutional violations. This constitutes the law of the case. In such a situation where explicit findings of *de jure* segregation exists and there is as here, an explicit finding that the *de jure* system has not been dismantled, "root and branch" is mandated.

B. Petitioners Misread *Milliken II* as Mandating Ancillary Relief in Lieu of Desegregation

But as a substitute for eliminating that which offends the Constitution, the petitioners' claims of "innovations" do bear close scrutiny. Magnet schools, alternative schools and the like have been found to be singularly ineffective desegregation devices for systems with system-wide segregation, although their use as educational programs in conjunction with actual desegregation has been found unexceptional.

In Dallas, the experience with such plans as the primary tool of desegregation has been, like its predecessor pupil placement plans of the 1950's, totally inadequate to eliminate the dual system.⁴

⁴ The NAACP's brief cites a statement to the press by Dr. Nolan Estes, Superintendent of the DISD, that the magnet school concept has not been effective in desegregating the school system in Dallas. *Tasby, supra*, 572 F.2d at 1015, and n. 15.

The Court of Appeals ordered:

"The district court is again directed to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools and to reevaluate the effectiveness of the magnet school concept."

In their attempt to suggest a conflict between the holding of this Court in *Milliken II infra* and the remand action of the Fifth Circuit Court of Appeals, petitioners imply that the reviewing court questioned the propriety of ancillary relief. Even a casual reading of the opinion demonstrates that the Court of Appeals specifically deferred to the judgment and widest possible discretion of local educators. In language most clear the court stated: "*We defer to the DISD's expertise in establishing suitable programs for the school children of Dallas.*" Emphasis added.

While the Court did caution, that on remand the district court should reconsider the other provisions of its plans in the light of the relief it ultimately orders, it allowed in Note 8, that:

"Because we wish to grant the district court enough latitude on remand to devise a plan that will be workable, we are not binding it to the present non-student-assignment portions of its orders."

Tasby 1017

Considering that *de jure* segregation is the law of the case, *Milliken II* permits a federal court to compel the various ancillary programs as a part of the remedy. Here, an imposition of those programs was not necessary: the school authorities and community affirmatively developed their own. The only problem they encounter, constitutionally, is in seeking to implant them in lieu of pupil "root and branch" desegregation. For sure, the lack of necessity

for the court to impose those programs can not logically be convoluted, as petitioners seek to do, into a disregarding by the Court of Appeals of the traditional equitable authority and duty of the federal courts to root out the violation by rendering "a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future," *United States v. Louisiana*, 380 U.S. 145, 154, 156 (1956), for it is "the historic purpose of equity to 'secur[e] complete justice.' *Brown v. Swann*, 10 Pet. [U.S.] 497, 503 (1836)." This principle has been reiterated over and over again by this court. *Swann v. Charlotte Mecklenburg*, 402 U.S. 1, *Keyes* 15 (1971), *Dayton v. Brinkman*, 403 U.S. 406, *Milliken I*, 418 U.S. 717 and *Milliken II*, 419 U.S. 815. Also see: *Evans v. Buchanan*, 423 U.S. 1080, and Stay Denied, J. Brennan, in Chambers, 1978.

The district court having left a large number of children locked into segregated one-race schools, *Swann* renders them suspect. The Court of Appeals properly remanded to the district court for it to require the DISD to justify their continued existence. So long as this burden has not been met, and the other *Swann* techniques, i.e. pairing and clustering, untried and time and distance facts absent, the Court of Appeals is not in a position to responsibly discharge its reviewing functions.⁷ It is thus clear that no conflict exists between the remand here, and *Swann*, *Milliken* and *Dayton*.

Not until the Court of Appeals has an opportunity to fully evaluate the "plan" of desegregation will it be able to reach a judgment with respect to its squaring with the Constitution. The granting of certiorari at this stage would

⁷ "[T]he case is every bit as important for the issues it raises as to the proper allocation of functions between the District Court and the Court of Appeals within the federal system." *Dayton* p. 857, *supra*.

be premature, subversive of the authority and responsibility of the district court to make factual findings, in the first instance.⁸

C. Piecemeal Appeals; The Remand Below Was a Correct Exercise of Jurisdictional Power of the Court of Appeals

We have made it abundantly clear that this is a particularly inappropriate case, and this is a particularly inappropriate juncture for the exercise of this Court's certiorari jurisdiction in view of the fact that piecemeal review is particularly unsuited to school desegregation cases. The legal arguments of petitioners are not only unconvincing and contradictory, they are clearly wrong. On the one hand they argue for *Dayton*, which affirms *Swann*, and on the other, they are challenging the *Dayton*-type remand to the district court for the purpose of engaging in fact-finding to supplement a deficient record. Thus, respondents deem it advisable to discuss the issue of piecemeal appeals, which this court discourages, but which petitioners seek here.

When the record is supplemented and reviewed, petitioners will have an opportunity to test those conclusions which will emanate from that review. The course of action sought here by petitioners, on issue unreached and unresolved by the Court of Appeals, would result in effect, in a direct review of those matters directly from district court. See Rule 20 of the Supreme Court Rules. This would, indeed be judicial leap frogging of the most unseemly type.

⁸ "The District Court, in the first instance, subject to review by the Court of Appeals, must make new findings. . . . It must then fashion a remedy in the light of the rule laid down in *Swann*, *supra*, and elaborated upon in *Hills v. Gautreaux*, 425 U.S. 284, (1976)." *Dayton*, *supra*.

There can be no justifiable reason for such an exceptional exercise of this court's certiorari jurisdiction. Clearly, then, logic and precedent argue loudly against review of these matters at this time.

And there are the practical considerations set forth by Judge Friendly in *Taylor v. Board of Education of New Rochelle*, 288 F.2d 600 (1961) which apply with increased force to the determination whether to utilize an extraordinary procedure which "deprives . . . this Court of the benefit of consideration by a Court of Appeals." *Brown Shoe Co. v. United States*, 370 U.S. at 355. The vital role which the Court of Appeals could play in resolving factual disputes and narrowing the issues is apparent from the nature of this case and of the primarily factual deficiencies noted by the Court of Appeals.

This court sits principally to correct legal, not factual errors.

While there may be occasions when the importance of an issue merits dispensing with intermediate appellate review (see cases cited in Rule 20 Supreme Court Rules), it is hardly conceivable that this court could render anything but advisory pronouncements if it is to interpose its power between the intermediate and district courts, thereby barring the development of a full factual record.⁹

⁹ On appeal, the task of a Court of Appeals is defined with relative clarity; it is confined by law and precedent, just as are those of the district courts and of this court. If it concludes that the findings of the District Court are clearly erroneous, it may reverse them under Fed. Rules Civ. Prac. 52(b). If it decides that the District Court has misapprehended the law, it may accept that court's findings of fact but reverse its judgment because of legal errors. *Dayton, supra*.

D. Fear of "White Flight" Not a Proper Basis for Maintaining One-Race Schools

The remedy for a system-wide violation is "all out desegregation" *Keyes*, 413 U.S. at 214. And in *Davis v. Board of Education Commissioners*, 402 U.S. 33, 37, this court stated that having once found a violation, which was done here, "the district judge or school authorities should make every effort to achieve the greatest degree of actual desegregation, taking into account the practicalities of the situation." Of course "desegregation" can be neither more nor less than the elimination of racial discrimination and all of its lingering effects, "root and branch." *Swann, supra, Green, supra, Davis, Morgan, infra, Milliken I, supra*.

Petitioners totally misapprehend the foregoing and instead contend that the Court of Appeals, in insisting upon a factual record sufficient to permit proper appellate review, is acting with judicial audaciousness. In so doing petitioners unleash a number of reasons as to why the schools of DISD should continue segregated, including fear of "white flight." They invite a ruling from this court that would permit the Constitution to have a different meaning in the urban areas than it has in a rural setting. The justification for such a new rule is the so-called urban education crisis.

The inappropriateness of such a call in the context of and the posture of these proceedings is obvious. This is not to say that a district court or Court of Appeals can be absolutely insensitive to the reality of and variety of private reactions to desegregation plans. Most courts are extremely alert to this possibility and accordingly, select plans that promise to cause the least adverse private reaction and yet transform a dual system into one of "just schools." *Green, supra*.

Where so-called "white flight" is a concern, as petitioners insist that it is here, courts are free to address that prob-

lem by the inclusion of programs that will address the perception of some schools being "inferior." Under no circumstance can fear of private reaction be the basis for perpetuating the condition which offends the Constitution, or for otherwise abandoning, even so slightly, the goal of eliminating racial discrimination and all of its lingering effects. See: *Morgan v. Kerrigan*, 530 F.2d 401, C.A. 1, *cert. denied sub nom.*; *White v. Morgan*, 426 U.S. 935; *Hobson v. Hansen*, 269 F.Supp. 401 (D. D.C.) *appeal dismissed* 393 U.S. 801; *Cooper v. Aaron*, 358 U.S. 1; *Monroe v. Bd. of School Comm.*, 391, 429 U.S. 450, 459; *Brunson v. Board of Trustees*, 429 F.2d 820, 823-827 (CA 4) (*en banc*); (Sobeloff, J. concurring). Also see *Milliken I, supra*.

CONCLUSION

WHEREFORE, for the foregoing reasons, these Respondents respectfully pray that the petition for a Writ of Certiorari be denied.

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Certificate of Service

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MAY 7 1979

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-253

NOLAN ESTES, ET AL.,

Petitioners,

versus

METROPOLITAN BRANCHES OF THE
DALLAS N.A.A.C.P., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The opinions, orders and judgment of the District Court (Estes Pet. App. "B", 4a-129a) are reported in part at 412 F.Supp. 1192. The opinion of the Court of Appeals (Estes Pet. App. "C", 130a-146a) is reported at 572 F.2d 1010.

JURISDICTION

The judgment of the Court of Appeals was entered on April 21, 1978 (App., 16-18). A Petition for Rehearing was denied on May 22, 1978 (Estes Pet. App. "D", 146a-147a). The Petition for Writ of Certiorari was filed on August 14, 1978, and was granted on February 21, 1979. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent parts as follows:

"... nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

QUESTION PRESENTED

Among the issues before the Courts below was the constitutionality of the remedy formulated by the District Court to eliminate the vestiges of a state-imposed dual school system in the large urban school system described in this Brief and by the Courts below. The question presented is:

Whether as to such school systems, the elimination of all one-race schools is the controlling factor to be

considered in determining whether a remedy formulated by the District Court is consistent with the Equal Protection Clause and this Court's decisions in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, and *Milliken v. Bradley*, 433 U.S. 267 (*Milliken II*).

STATEMENT OF THE CASE

This action was brought in the District Court against Petitioners, the members of the Board of Trustees of the Dallas Independent School District and its General Superintendent (the School District), on October 6, 1970, by both Blacks and Mexican-Americans (Respondent-Plaintiffs) asserting de jure segregation of each class and seeking the establishment of a unitary school system for each class.

The School District and the federal courts have been on intimate terms in school desegregation matters since 1955 immediately following *Brown II*. The instant action is not the first, but a second and separate Dallas school desegregation case. At the time the instant action was filed there was also pending in the United States District Court for the Northern District of Texas an existing class action desegregation suit in which continuing jurisdiction is exercised by the District Court and in which the various earlier proceedings involving desegregation of the School District have been determined.¹

¹ The various proceedings in that action in part may be found at *Bell v. Rippey*, 133 F.Supp. 811 (N.D.Tex., 1955), *Brown v. Rippey*, 233 F.2d 796 (5th Cir., 1956), cert. denied, 352 U.S. 878; *Bell v. Rippey*, 146

On June 3, 1971, in a decision entered as a result of an appeal from an order denying the Respondent-Plaintiffs' first motion for preliminary injunction, the Court of Appeals directed the District Court to make full written findings of fact and conclusions of law on the merits of this action in the light of principles enunciated in *Swann v. Estes*, 444 F.2d 124 (5th Cir. 1971). The District Court did so in August, 1971. The Respondent-Plaintiffs again appealed.

Almost four years later, on July 23, 1975, the Court of Appeals, among other things, vacated the student assignment plan ordered by the District Court in August of 1971 and remanded with directions to formulate elementary and secondary student assignment plans which comport with the directives of the Supreme Court and that July 23, 1975, Opinion-Mandate of the Court of Appeals. *Tasby v. Estes*, 517 F.2d 92 (5th Cir. 1975), cert. denied, 423 U.S. 939.

On August 25, 1975, over the School District's objections, the District Court allowed the Metropolitan Branches of the Dallas N.A.A.C.P. (Respondent-NAACP) to intervene. (August 25, 1975, Order permitting NAACP to Intervene; App., 13-14)

F.Supp. 485 (N.D.Tex., 1956); *Borders v. Rippy*, 247 F.2d 268 (5th Cir., 1957); *Rippy v. Borders*, 250 F.2d 690 (5th Cir., 1957); *Boson v. Rippy*, 275 F.2d 850 (5th Cir., 1960); *Borders v. Rippy*, 184 F.Supp. 402 (N.D.Tex., 1960); *Boson v. Rippy*, 285 F.2d 43 (5th Cir., 1960); *Borders v. Rippy*, 188 F.Supp. 231 (N.D.Tex., 1960); *Borders v. Rippy*, 195 F.Supp. 732 (N.D.Tex., 1961); *Britton v. Folsom*, 348 F.2d 158 (5th Cir., 1965); and *Britton v. Folsom*, 350 F.2d 1022 (5th Cir., 1965).

On February 2, 1976, trial on fashioning a student assignment plan once again commenced in the District Court. This trial lasted five weeks, 44 witnesses testified and there were 145 exhibits admitted into evidence. Besides the initial parties Plaintiffs and the School District, six Intervenor participants participated: (1) Curry, et al, (2) Maxwell, (3) Brinegar, et al, (4) Strom, et al-Oak Cliff, (5) Strom, et al-Pleasant Grove, and (6) the NAACP-Intervenors. In addition the tri-ethnic Educational Task Force of the Dallas Alliance as Amicus Curiae participated and presented evidence. There were six student assignment plans before the Court prior to the District Court's March 10, 1976, Opinion and Order (Estes Pet. App. "B", 4a-44a), including a plan developed by the Court's own appointed desegregation expert, Dr. Josiah C. Hall, who has been associated with the University of Miami Desegregation Consulting Center. After March 10, 1976, and prior to the April 7, 1976, Final Order there was yet a seventh plan before the Court. This was a plan developed by the School District pursuant to the District Court's March 10, 1976, Opinion and Order directing the School District to set forth the specifics of the Amicus Curiae concept proposals presented to the District Court. This trial culminated in the District Court's April 7, 1976, Final Order, as supplemented, and it is from such April 7, 1976, Final Order, as supplemented, that the appeal to the Court of Appeals arose. The District Court's April 7, 1976, Final Order (Estes Pet. App. "B", 53a-120a), as supplemented (Estes Pet. App. "B", 121a-129a), containing the remedy formulat-

ed by the District Court and here in question, will hereafter be referred to as the Final Order.

Both Courts below have correctly recognized the urban metropolitan nature of the School District and that the School District is not a small rural school system but is the eighth largest urban school district in the United States.

As to Mexican-American students the District Court specifically found in a July 16, 1971, Memorandum Opinion (Brinegar Pet. App. A, A-1-A-6), that the Plaintiff Mexican-Americans failed to maintain their burden of proof to show that there had been some form of de jure segregation against Mexican-American students. However, the District Court by that same order of July 16, 1971, directed that Mexican-American students be considered as a separate ethnic group and a "minority" for purposes of a desegregation plan. Hence in the School District the problem exists of formulating a tri-ethnic remedy and the phrase "Anglo" is used in lieu of "white" under such circumstances. *Tasby*, 517 F.2d at 106.

There is no actual total population census of the School District. The boundaries of the City of Dallas and the School District are not coterminous. The population of the City of Dallas is 800,000 to 900,000. The ethnic composition of the total population of the School District, as distinguished from student enrollment, approximates the ethnic composition of the population of

the City of Dallas which is estimated to be 25% or 30% Black, 10% to 15% Chicano and the remainder Anglo. (R. Vol. I, 279, 405, 406; App., 36-37, 37-39) This is far different from the ethnic composition of the student population of the School District.

In 1975 the student population of the School District was 41.1% Anglo, 44.5% Black, 13.4% Mexican-American and 1% "other." (Def. Ex. 11, pp. 1, 2; R. Vol. I, 63, 64; App., 222-223, 21-23) The Court is advised that as of March 1, 1979, the student population of the School District was 33.50% Anglo, 49.11% Black, 16.37% Mexican-American and 1.03% "other." This enrollment pattern then at the time of preparation of this brief would be as follows:

	December 1, 1975		March 1, 1979	
	Number	Percent	Number	Percent
Anglo	58,023	41.1	44,766	33.50
Black	62,767	44.5	65,637	49.11
Mexican-American	18,889	13.4	21,876	16.37
Other	1,443	1.0	1,369	1.03
	141,122		133,648	

At the time of trial on February 2, 1976, the School District had lost approximately 40,000 Anglo students during the pendency of this second action. As the students become younger there is a decided drop in the number and percentage of Anglo students. (Def. Ex. 13, R. Vol. I, 71; Def. Ex. 11, pp. 1, 2, R. Vol. I, 63, 64; App., 224-225, 25-26, 222-223, 21-23)

Defendants' Exhibit 13, which reflects the historical enrollment of the School District, is as follows:

HISTORICAL ENROLLMENT*

Dallas Independent School District

<u>Dates</u>	<u>Anglo</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>	<u>Mexican-American</u>	<u>Percent</u>	<u>Total</u>
October, 1969-70	97,131		52,531		13,606		
Kindergarten	- 28		- 271		- 94		
Total	97,103		52,260		13,512		162,875
October, 1970-71	95,133		55,648		13,945		
Kindergarten	- 121		- 1,036		- 216		
Total	95,012	- 2.2	54,612	+ 4.5	13,729	+ 1.6	163,353
October, 1971-72	86,548		57,394		15,154		
Kindergarten	- 66		- 1,455		- 269		
Total	86,482	- 9.0	55,939	+ 2.3	14,885	+ 8.4	157,306
October, 1972-73	78,560		59,643		15,909		
Kindergarten	- 126		- 2,383		- 514		
Total	78,434	- 9.3	57,260	+ 2.4	15,395	+ 3.4	151,089
October, 1973-74	73,042		62,468		17,141		
Kindergarten	- 3,439		- 3,575		- 1,276		
Total	69,603	- 11.3	58,893	+ 2.9	15,865	+ 3.1	144,361

(Continued below)

* HEW Report

<u>Dates</u>	<u>Anglo</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>	<u>Mexican-American</u>	<u>Percent</u>	<u>Total</u>
October, 1974-75	67,324		63,760		18,426		
Kindergarten	- 3,821		- 4,105		- 1,562		
Total	63,503	- 8.8	59,655	+ 1.3	16,864	+ 6.3	140,022
October, 1975	60,796		64,594		18,994		
Kindergarten	- 3,370		- 4,338		- 1,559		
Total	57,426	- 9.6	60,256	+ 1.0	17,435	+ 3.4	135,117
1969-70	97,103		- 52,260		- 13,512		
1975	- 57,426		60,256		17,435		
Total Loss	39,677	- 40.9	7,996	+ 15.3	3,923	+ 29.0	

Since kindergarten attendance was not mandatory during the entire period shown on this exhibit, appropriate adjustments have been made and the calculations based on Grades 1-12.

The ethnic make-up by grade level of the School District as of December 1, 1975, was:
(Def. Ex. 11, pp. 1, 2; App. 222-223)

Grade Level	Anglo	%	Black	%	Mexican-American	%	Other	%	Total
K	3254	34.8	4429	47.3	1595	17.0	87	.9	9365
1	4260	36.7	5274	45.5	1955	16.9	113	1.0	11602
2	4095	36.9	5080	45.7	1822	16.4	104	1.0	11101
3	3947	36.7	5056	46.9	1648	15.3	118	1.1	10769
4	3756	35.5	5098	48.1	1608	15.2	131	1.2	10593
5	4226	37.5	5251	46.6	1672	14.8	125	1.1	11274
6	4543	39.3	5394	46.6	1504	13.0	128	1.1	11569
7	4853	41.0	5356	45.2	1532	12.9	103	.9	11844
8	5039	42.2	5343	44.8	1438	12.1	115	1.0	11935
9	5231	43.5	5406	45.0	1286	10.7	100	.8	12023
10	5287	45.4	4943	42.5	1259	10.8	155	1.3	11644
11	4828	51.5	3526	37.5	936	10.0	93	1.0	9383
12	4704	58.7	2611	32.6	634	7.9	71	.8	8020
TOTAL	58023	41.1	62767	44.5	18889	13.4	1443	1.0	141122

The School District estimates that in 1980 the percentage of Anglo enrollment will be 26%, that Black enrollment will be 57% and that Mexican-American enrollment will be 18%. (R. Vol. I, 67, 68; App., 23-24, 24-25)

The School District contains approximately 351 square miles within the 900 square miles of Dallas County. From the School District's most northerly point to its most southerly, there is a distance of approximately 35 miles viewed from the northwest to the southeastern part of the district. It is about 25 miles from what is called the southwest quadrant in Oak Cliff just below Hulcy Junior High School to the northernmost point near the Dallas County line. (R. Vol. I, 405; App., 37-38)

In addition to being faced with the task of fashioning a remedy for an ever increasing *minority Anglo* school system, the District Court also had the problem of preserving naturally integrated areas and schools which had become naturally integrated due to changing housing patterns. All of the plans before the Court submitted by all of the parties, the Amicus Curiae and the Court's desegregation expert recognized and accepted the concept that there was no reason to disturb already desegregated neighborhood schools. Each plan proposed to leave certain areas and schools alone as they were naturally integrated. (R. Vol. I, 104, 105; Hall's Ex. 5, pp. 14-19, R. Vol. IV, 123; R. Vol. IV, 129, 130; NAACP Ex. 2, p. 6, R. Vol. IV, 6; R. Vol. IV, 15, 16, 19;

Pl. Ex. 16, pp. 9, 41, R. Vol. III, 231, 243; R. Vol. III, 241-242, 259, 330, 355, 406, 410; App., 33-35, 251-259, 100-101; 102-103, 230, 92-93, 93-95, 95-96, 237-238, 248-249, 70-71, 73-74, 71-72, 74-75, 75-76; 76-77, 86-87, 89-90)

Further the District Court had to consider the location within the School District of these naturally integrated areas and schools in relationship to those areas containing the remaining predominantly Anglo students and those areas containing predominantly Mexican-American or Black enrollment. The area containing the only remaining predominantly Anglo students lies generally in a strip along the northern and certain eastern sections of the system. The predominantly Mexican-American or Black students reside to the south and southeast in areas distant from the predominantly Anglo students. Separating the remaining predominantly Anglo students and the predominantly Mexican-American or Black students are large portions of the naturally integrated areas and schools. (Def. Ex. 2, R. Vol. I, 77, 85; Def. Ex. 3, R. Vol. I, 81, 85; R. Vol. I, 77, 78, 79, 80, 81; App., 220, 27-28, 31-33, 221, 30-31, 31-33, 27-28, 28, 29, 29-30, 30-31)

Defendants' Exhibit 1 reflects the Black and white racial composition of the student population by residential patterns in the year 1960. The orange area shows the residential location of Black students in the year 1960. The yellow area shows the residential location of white students in the year 1960. In 1960 sep-

arate statistics were not kept as to Mexican-American students and Mexican-American students were counted as "white." In 1960 Mexican-American students were located in the area of the present Travis Elementary School and the Juarez and Douglass Elementary Schools. To that extent the Mexican-American student population in 1960 would be shown in the yellow area on Defendants' Exhibit 1. (R. Vol. I, 76; App., 26-27)

Defendants' Exhibit 2 reflects the current residential patterns of students in the School District. The yellow zone on that map reflects the only remaining predominantly white students, the pink zone is the naturally integrated area representing minority and Anglo, and the dark orange on that map represents predominantly Mexican-American or Black enrollment. (R. Vol. I, 77, 78; App., 27, 28)

Defendants' Exhibit 3 reflects the growth over the period 1960, 1965 and 1970 of the growing Black scholastic population within the School District, as well as the areas of the School District that in 1975 were composed of at least 25% Black students, the areas that in 1975 were at least 25% Mexican-American and the areas that in 1975 were at least 25% minority combined, i.e., 25% of both Black and Mexican-American. (R. Vol. I, 80, 81; App., 29-30, 30-31)

In its July 23, 1975, Opinion-Mandate the Court of Appeals made reference to the "endurance record perhaps, but not speed records" set with respect to

desegregation litigation concerning the School District. *Tasby*, 517 F.2d at 109. The Court of Appeals there also observed "The DISD is no stranger to school desegregation proceedings before this Court." *Id.* at 95.

If there is one overriding concern of the School District, it may be fairly said to be that the School District would indeed like to become a stranger to school desegregation proceedings. To that end, and given the origin and development of what became the provisions of the District Court's Final Order, the School District supports the District Court's Final Order and asks that it be affirmed in its entirety by this Court.

During the course of hearings in the District Court commencing February 2, 1976, the descriptive terminology of "student assignment" provisions and "non-student assignment" provisions developed. As used, non-student assignment provisions involved judicial remedies in desegregation proceedings going beyond student assignment plans and pertaining to (a) the operation and management of the business and affairs of the School District, and (b) the education, curriculum and program aspects of the School District.

On September 16, 1975, the District Court in a public hearing expressed great dissatisfaction with both a desegregation plan proposed by the School District and a plan proposed by the Respondent-NAACP. The District Court went on to point out that this was a community-wide problem that involved all segments of

the city. (R. September 16, 1975, Hearing on Plaintiffs' Motion for Further Relief, 93-91; App., 198-204) As a result of the District Court's comments, there came to be presented to the District Court certain concept proposals of an organization known as the Educational Task Force of the Dallas Alliance. It was from such concepts that the Final Order originated.

The Educational Task Force of the Dallas Alliance is a tri-ethnic group. A description of how the Educational Task Force of the Dallas Alliance came into being and how its concepts came to be presented to the District Court is summarized below.

There exists in the City of Dallas a community service organization known as the Dallas Alliance to act upon urban issues. A description of the Dallas Alliance and its activities during and preceding the trial commencing February 2, 1976, follows.

The Dallas Alliance was composed of a board of forty trustees. (R. Vol. V, 50, 51; App., 132, 133) Of these forty persons, eleven were Black, four were Mexican-American, one was American Indian and the remainder were Anglo. (R. Vol. V, 226, 227; App., 153-154, 154-155) In addition the Dallas Alliance had 77 cooperating or corresponding organizations with whom it communicated and received views and information. (R. Vol. V, 52, 53; App., 133-134, 134-135) Prior to instituting its Educational Task Force the Dallas Alliance had two other task forces in operation.

One was on the Criminal Justice System and the second on Neighborhood Regeneration and Maintenance. (R. Vol. V, 54, 55; App., 135, 136) On October 23, 1975, the Dallas Alliance authorized an Educational Task Force of the Dallas Alliance. (R. Vol. V, 59, 61, 62, 388; Def. Ex. 17, R. Vol. V, 387; App., 136-138, 161-162, 226-229, 160-161) Creation of that Task Force came about as follows. Following the District Court's comments of September 16, 1975, a group of twenty citizens, some of whom belonged to the Dallas Alliance and some of whom did not, had constituted themselves together as a committee to look into some matters with respect to education in the School District and to inquire into whether the processes of developing a desegregation plan were possible. (R. Vol. V, 68, 69; App., 142, 143) The committee was made up of six Blacks, seven Mexican-Americans and seven Anglos. (R. Vol. V, 7; App., 125) This committee sought and obtained from the Dallas Alliance status as its Educational Task Force. (R. Vol. V, 61; App., 137-138) Nine persons serving on the committee that then became the Educational Task Force were at that time members of the Dallas Alliance. (R. Vol. V, 64, 65; App., 139-140, 140-141) After the committee became the Educational Task Force of the Dallas Alliance the American Indian member of Dallas Alliance became a member of the Educational Task Force. (R. Vol. V, 65, 66, 69; App., 140-141, 142-143)

On December 18, 1975, the District Court summoned all parties and their attorneys to appear before it and in effect introduced the Educational Task Force to

the parties and indicated strongly its support for their efforts. (R. December 18, 1975, Called Hearing of Judge Taylor, 1-14; App., 205-215) The Educational Task Force of the Dallas Alliance was given a charge by the Dallas Alliance to attempt to design a plan for the school system. (R. Vol. V, 75; App., 143-144) This it set out to do as follows:

The Task Force was assigned the services of the Executive Director of the Dallas Alliance, Dr. Paul Geisel. (R. Vol. V, 2; App., 122-123) Dr. Geisel was on leave of absence from the University of Texas at Arlington where he is a Professor of Urban Affairs. (R. Vol. V, 3; App., 123-124) Dr. Geisel holds a PhD in sociology from Vanderbilt; he did as his doctoral dissertation a study of the educational and aspirational achievement levels of students in the Chattanooga, Tennessee, school system; he has been employed by Tuskegee Institute; and while teaching at the University of Pittsburgh he did an analysis of the Pittsburgh schools in terms of racial achievements and racial integration and was the Educational Chairman of the Allegheny County NAACP. (R. Vol. V, 5; App., 124-125) Dr. Geisel went to work with the Educational Task Force of the Dallas Alliance in the middle of October, 1975. (R. Vol. V, 21; App., 128) Upon obtaining status as the Educational Task Force of the Dallas Alliance that Task Force met on a regular basis every Tuesday evening for an extended period until about December 16, 1975. (R. Vol. V, 22; App., 128) The Task Force was first briefed by school personnel and by city officials. Thereafter Dr.

Geisel traveled throughout the country to meet with various leading figures in the field of desegregating public schools. (R. Vol. V, 22; App., 128) In the course of this work Dr. Geisel personally saw, or spoke from his office by telephone with, approximately thirty different people. Dr. Geisel talked by telephone extensively with people in Atlanta, Charlotte-Mecklenburg and Jacksonville, Florida. When Dr. Geisel returned to Dallas from his travels, he made a report to the Educational Task Force on the kinds of ideas and processes used to desegregate schools and the kinds of issues that are involved. (R. Vol. V, 22; App., 128) On Tuesday evening, December 16, 1975, the Task Force heard Dr. Geisel's report and developed guidelines for him to follow. Dr. Geisel was then given until January 6, 1976, to attempt to formulate, develop and flesh out what the proposals would look like if they were turned in as proposals for a desegregation plan. (R. Vol. V, 23; App., 129)

The Task Force then began meeting on Tuesday nights as well as on Saturdays, and in many instances on Sundays. Altogether the Task Force spent about 1,500 hours together. (R. Vol. V, 23; App., 129)

The Task Force came to a consensus, to a community of the mind, and they came to understand what each member was attempting to achieve through his or her participation. (R. Vol. V, 24; App., 129-130) On Monday, February 16, 1976, the Educational Task Force went to the District Court and presented its plan. (R.

Vol. V, 24; App., 129-130) The "consensus" of the Task Force was much more than a bare majority. The initial proposal submitted to the District Court reflected the support of nineteen of the twenty-one members. (R. Vol. V, 102; App., 144-145) Sixteen members of the Task Force were present at the time their proposals were submitted to the District Court on February 16, 1976. (R. Vol. V, 104; App., 145-146)

The Task Force consulted with some thirty experts. The Task Force was interested in talking to people who were skilled in the field of education and skilled in the field of desegregation. Most of these people were contacted personally by Dr. Geisel. In rare instances the consultants dealt directly with the Task Force members themselves. (R. Vol. V, 369, 370; App., 155-156, 156-157)

Persons contacted on behalf of the Educational Task Force were: Dr. Jose Cardenas (also the Plaintiffs' witness); Dr. Horacio Ulibarri (from New Mexico); Dr. Robert Green, Dean of the College of Urban Development at Michigan State; Dr. Harold Gores, Educational Facilities Laboratory; Dr. Frank Rose, Executive Director of the Lamar Society of the University Associates in Washington; Dr. Thomas Pettigrew, then on leave from Stanford University; Dr. Rudolpho Alvarrez, Professor of Sociology in Chicano studies at U.C.L.A.; Wilson Riles, State Superintendent of Public Instruction in California; Davis Campbell, Assistant to the State Superintendent of Public Instruction of

California; Marion Joseph, Assistant to the State Superintendent of Public Instruction of California; Ray Martinez, Superintendent of Instruction at Pasadena, California; Jim Taylor and Ron Prescott, officials in the Los Angeles School District; Robert Nicewander, United States Office of Education; Marshall Smith of the National Institute of Education; Dennis Doyle, National Institute of Education; Jack Troutman, a local consultant; Dr. Julius Truelson, former president of the Great Cities School System and former Superintendent of Schools, Fort Worth Independent School District; Research and superintendent's staff, Fort Worth Independent School District; School Superintendent of Sacramento, California; School Superintendent of San Francisco Schools; School Superintendent of Charlotte, North Carolina; City Planning Department of the City of Dallas; Dr. Leon Lessinger, Dean of the College of Education of the University of South Carolina. (R. Vol. V, 370-372; App., 156-158)

While the Task Force did examine the school systems in a good many cities, it did not try to imitate or copy any other city. The Task Force tried to come up with something unique for the total city of Dallas. (R. Vol. V, 373, 374; App., 158-189, 159-160)

Following the Task Force presentation to the District Court on Monday, February 16, 1976, that Court on Tuesday, February 17, 1976, submitted the Task Force's proposals to the parties and announced that the Educational Task Force of Dallas Alliance would be rec-

ognized by the Court as Amicus Curiae. The Court then asked the parties to study these proposals and report back their reactions. The reactions of the Respondent-Plaintiffs, the School District and the Respondent-NAACP were unfavorable to various aspects of the proposals. (R. Vol. IV, 295-317; App., 104-121) The Court then called Dr. Geisel to the stand as the Court's witness and the Task Force proposals were introduced in evidence. (R. Vol. V, 8, 9; App., 126-127) On March 3, 1976, the Task Force filed its modified proposals (R. Vol. IX, 363; App., 196-197) A member of the Task Force was called by the Court as the Court's witness to testify concerning the modified proposals. (R. Vol. IX, 361; App., 196)

It was the concepts in these March 3, 1976, modified proposals which the District Court adopted in two preliminary orders. The District Court directed the School District to set forth in writing the specifics of these modified proposals. In this connection the District Court's March 10, 1976, Opinion and Order provided: (Estes Pet. App. "B", 41a)

"Accordingly, it is ORDERED by the Court that the modified plan of the Educational Task Force of the Dallas Alliance filed with the Court on March 3, 1976, is hereby adopted as the Court's plan for removal of all vestiges of a dual system remaining in the Dallas Independent School District, and the school district is directed to prepare and file with the

Court a student assignment plan carrying into effect the concept of said Task Force plan no later than March 24, 1976."

and the District Court's March 15, 1976, Supplemental Order provided: (Estes Pet. App. "B", 45a, 46a)

"During the process of fleshing out the Court's Order of March 10, 1975, some questions have arisen regarding the Court's adoption of the Dallas Alliance's plan. So that there is no misunderstanding in this regard, the Court intended by the order of March 10 to adopt the *concepts* suggested by the plan of the Educational Task Force of the Dallas Alliance. The staff of the school district shall take these concepts and adapt them to fit the characteristics of the Dallas Independent School District. The Court recognizes that during this process, a certain amount of flexibility is necessary. The Court expects the school district to put into effect the concepts of the Dallas Alliance plan. The specifics of the desegregation plan for the DISD will be embodied in the Court's Final Order which will be entered in approximately two weeks."

Obedient to the District Court's orders, the School District on March 24, 1976, on March 29, 1976, and on April 1, 1976, filed with the Court three separate documents representing its efforts to set forth the

specifics of the modified proposals of the Educational Task Force of the Dallas Alliance.

On April 7, 1976, the District Court in its Final Order fashioned and directed the remedy thought to be necessary by that Court to eliminate the vestiges of a dual school system in the School District. In the District Court's language introducing that remedy: (Estes Pet. App. "B", 47a)

"The Court has received and thoroughly considered suggestions made by various intervenors and by the Amicus Curiae Educational Task Force of the Dallas Alliance subsequent to the submission of the DISD's student assignment plan on March 24. The Court is of the opinion that many of these suggestions have merit and should be reflected in the student assignment plan. The Court has thus modified the document submitted by the DISD to incorporate many of these suggestions. It has further incorporated modifications necessary in order that the spirit of the Dallas Alliance's plan will be implemented to the fullest extent possible. These changes appear in the Final Order entered this day."

The District Court's Final Order constitutes a judicial sanction of the heart of a compromise reached by a tri-ethnic group of citizens. The concepts pro-

posed to the District Court by the Educational Task Force of the Dallas Alliance represent a compromise arrived at in the eleventh hour in which the hard bargain was struck between a student assignment plan which might be briefly summarized as providing (a) a somewhat "neighborhood" approach to schools for grades K-3 and 9-12, and (b) judicially forced integrated 4-6 grade centers and 7-8 grade centers requiring busing, and (c) unique and special districtwide vanguard schools for grades 4-6, academy schools for grades 7-8, and magnet schools for grades 9-12, on the one hand; and on the other hand, increased participation by minorities in the day-to-day running of the School District by virtue of the 44% Anglo, 44% Black and 12% Mexican-American ethnic ratio applicable to the top salaried administrative positions in the School District, then established at 142 in number (R. Vol. V, 133-137, 213-215; App., 146-150, 151-153)

Respondents Plaintiffs and NAACP have opposed and objected to only the *student assignment* portions of the District Court's Final Order. These Respondents want both massive busing in a now minority Anglo school district as well as the imposition upon the School District of federal court orders involving the federal judicial system in (a) the operation and management of the business and affairs of the School District, and (b) the education, curriculum and program aspects of the School District.

Implementation of the District Court's Final Order commenced in August of 1976 with the opening of the

1976-77 school year. Thereafter, on October 11, 1976, the Board of Education of the School District unanimously adopted an order calling an election to be held December 11, 1976, on the proposition of whether the Board be authorized to issue bonds in the amount of \$80,000,000.00 for the purpose of the construction and equipment of school buildings in the School District and the purchase of necessary sites therefor. That Board of Education was, and still is, composed of nine members. These School Trustees were not elected "at large," but rather each was elected from single-member trustee districts fairly apportioned. The Board is composed of six Anglos, two Blacks and one Mexican-American. (R. February 24, 1977, Hearing of Defendants' Motion for Approval of Site Acquisition, School Construction and Facility Abandonment, 5, 6; R. Vol. II, 54, 58-60; App., 216-217, 40, 41-43)

On December 11, 1976, the voters in the School District — including the voters in the East Oak Cliff Subdistrict — voted in favor of this \$80,000,000.00 school improvement bond issue. In the East Oak Cliff area there were 3,000 votes for the bond issue and only 300 or 400 votes against this bond issue. The bond issue also carried by an overwhelming majority in South Dallas which is also a predominantly black area in the School District. (R. February 24, 1977, Hearing of Defendants' Motion for Approval of Site Acquisition, School Construction and Facility Abandonment, 6, 7; App., 217-218)

All parties essentially agree that the time and distance students must spend on buses together with traffic congestion prevent transportation of students between what is identified by the District Court as the virtually all-black East Oak Cliff area and the area containing the remaining Anglos in the strip along the north and east portions of the School District. All plans before the District Court except Respondent-Plaintiffs' Plan A left all or portions of this East Oak Cliff area with one-race schools. Even then Respondent-Plaintiffs did not seriously urge their Plan A to the District Court.

Respondent-Plaintiffs' expert witness, Dr. Charles V. Willie, testified:

"Yes, I made time studies of how long it would take to go from the tip end of North Dallas to Oak Cliff and I found that to be an exceedingly long distance. But I don't think that the School Districts have to be laid out that way." (Emphasis ours) (R. Vol. III, 134; App., 51)

Respondent-Plaintiffs' witness and lead counsel, Mr. Edward B. Cloutman, III, testified concerning their only effort at a time and distance study as to which evidence was presented:

"A. It's the one next to the Dealey zone. I think that one we that we made was at least

about thirty-four, thirty-five minutes and it took — it was about twenty-two miles."

* * *

"Q. . . . What route did you take?

"A. We took a, I believe, east-west major street. I believe Royal Lane, to the Tollway, south to I-35, I-35 to I believe Ledbetter on the southern end, Ledbetter east — I've forgotten the street name. It's the same street that the Veteran's Hospital is on, turning north and then to the school.

"Q. What time of day?

"A. It was about noon.

"Q. What day of the week?

"A. It was on a Sunday." (Emphasis ours) (R. Vol. III, 375, 376; App., 79-80)

The Court's witness, Dr. Paul Geisel, testified:

"Q. And you left South Oak Cliff. Now, as I would look at that map, it would leave South Oak Cliff all black, I believe that would be.

"A. Essentially.

"Q. What was the reason — was there any reason for that?

"A. The reason that had to do with two components, I believe. One was the issue of attempting to — not to do cross town busing or do busing that required a travel time of greater than thirty minutes . . ." (Emphasis ours) (R. Vol. V, 49; App., 130-131)

In three separate places Respondent-Plaintiffs' Plan B states the reason for leaving black one-race schools in the East Oak Cliff Subdistrict. In the thrice repeated language of Plaintiffs: (Pl. Ex. 16, pp. 34, 36, 38, R. Vol. III, 231, 243; R. Vol. III, 376, 377; App., 239-240, 241-243, 243-245, 70, 73-74, 80)

"Distance from the majority white areas, capacity of schools, DISD enrollment patterns and generally good physical facilities were factors resulting in South Oak Cliff retaining its present student assignment patterns." (Emphasis ours)

The "South Oak Cliff" referred to is the area now referred to as East Oak Cliff in the District Court's Final Order. By Respondent-Plaintiffs' own admission in their Plan B, and by their own attorney-witness's testimony, the long distance of the East Oak Cliff Subdistrict from areas containing white students is so great that the continued existence of black one-race schools in East Oak Cliff is justified. (R. Vol. III, 378, 379; App., 81-82, 82-83) Respondent-Plaintiffs also admit in their Plan B, and by their own attorney-witness's testimony, that the "enrollment patterns" in the School District, i.e., an ever expanding scholastic population in East Oak Cliff, the number of Black students and the number of Anglo students in the School District and the absence of Anglo student growth in the School District, further justify the continued existence of black one-race schools in East Oak Cliff. (R. Vol. III, 379-381, 407, 408; App., 82-84, 87-88, 88-89)

Respondent-Plaintiffs, by motions filed in the District Court on April 2, 1976, and April 5, 1976, sought an award of attorneys' fees in this action under Section 718 of the Education Amendments Act of 1972 on the theory that they were the "prevailing party." On April 30, 1976, Respondent-Plaintiffs filed a brief in support of their motion for attorneys' fees which contained the following statement: (April 30, 1976, Brief in Support of Motion for Attorneys' Fees and Costs, p. 4; App., 14)

"Finally, the plan adopted by the Court in its order of March 10, 1976, together with Supplemental Opinion and Orders dated April 7, 1976, and April 15, 1976 adopt and/or incorporate almost every precept proposed by plaintiffs for student assignment and non-student assignment features of the remedy."

The District Court recognized that the Respondent-Plaintiff Black and Mexican-American students obtained all of the student assignment and non-student assignment relief they proposed and sought. The District Court in its Order dated July 20, 1976, awarding attorneys' fees and costs to Respondent-Plaintiffs, pointed out: (July 20, 1976, Memorandum Opinion, p. 3; App., 15)

"Finally, the plan adopted by the Court on March 10, 1976, and Ordered to be implemented on April 7, 1976, and April 15, 1976, incorporated almost every precept proposed

by plaintiffs for both student assignment and non-student assignment remedies."

Respondent-Plaintiffs filed two plans with the District Court on January 12, 1976. Respondent-Plaintiffs' Exhibit 16 contains both plans, one of which is identified as Plan A and one as Plan B. Prior to the filing of the School District's brief in the Court of Appeals Respondent-Plaintiffs' counsel, Mr. Edward B. Cloutman, III, advised counsel for the School District that Respondent-Plaintiffs did not intend to urge either of Respondent-Plaintiffs' Plans A or B in this case. Respondent-Plaintiffs did not urge either of their plans in the Court of Appeals. Both of Respondent-Plaintiffs' plans have been abandoned by Respondent-Plaintiffs in this action.

Various approaches in Respondent-Plaintiffs' two plans support the student assignment plan contained in the District Court's Final Order. Both Plaintiffs' Plans A and B proposed to leave certain areas and schools of the School District alone as those areas and schools were naturally integrated. Respondent-Plaintiffs' testimony admits that under Plaintiffs' Plan A, 13 elementary schools were considered desegregated and were left alone as being naturally integrated. Plaintiffs' testimony admitted that under Plaintiffs' Plan B, 41 elementary schools were considered desegregated and were left alone as being naturally integrated. (Pl. Ex. 16, pp. 9, 41, R. Vol. III, 231, 243; R. Vol. III, 241, 242, 259, 330, 355, 406, 410; App., 237-238, 248-249, 70-71, 73-74, 71-72, 74-75, 75-76, 76-77, 86-87, 89-90) The

concept of leaving certain areas and schools of the School District alone for the reason that those areas and schools were naturally integrated is a part of the student assignment plan contained in the District Court's Final Order.

Both Respondent-Plaintiffs' Plans A and B proposed magnet schools, some districtwide and some serving smaller parts of the School District. As shown in the Overview to Respondent-Plaintiffs' Plans A and B, Respondent-Plaintiffs recommend that all magnet schools should be constructed in the inner-city area to encourage the inward flow of students, and particularly white students, and that these schools should seek the assistance of local businesses and citizens in order to acquire appropriate construction sites. Respondent-Plaintiffs suggest that student enrollment in such magnets should approximate the ethnic enrollment of the School District as a whole with exceptions for the elementary magnets created under Plan B. (Pl. Ex. 16, pp. 2, 39, R. Vol. III, 231, 243; R. Vol. III, 371, 372, 382, 383; App., 234-236, 245-247, 70-71, 73-74, 77-78, 78-79, 84-85, 85-86)

This concept of magnet schools and their location in the minority or inner-city areas to encourage the inward flow of students, and particularly white students, with the participation of the business community and student enrollment approximating the ethnic enrollment of the School District as a whole is a part of the student assignment plan contained in the District Court's Final Order.

Respondent-Plaintiffs' Plan B leaves some virtually all-black schools in what has become known as the East Oak Cliff Subdistrict. Under Respondent-Plaintiffs' Plan B there are 12 elementary schools, two junior high schools and one high school that are black one-race schools in East Oak Cliff. Respondent-Plaintiffs' Plan B also leaves two all-black elementary schools in West Dallas. These are Allen and Lanier. Respondent-Plaintiffs' Plan B also leaves Dunbar an all-black elementary school in South Dallas. (R. Vol. III, 378; App., 81-82) Thus Respondent-Plaintiffs' Plan B leaves 15 all-black elementary schools, two all-black junior high schools and one all-black high school.

Throughout, Respondent-NAACP has insisted that the existence of some one-race schools invalidates the student assignment portion of the remedy. However, Respondent-NAACP publicly admits it does not have a solution. In a newspaper interview this public admission was made by the attorney of record for the Respondent-NAACP:

"And even the NAACP admits that it is having some trouble finding a way to break up the all-black nature of the subdistrict. 'If I knew the answer, I'd give it to you,' says NAACP attorney E. Brice Cunningham. 'I admit that we have not yet come up with an alternative to some all-black schools. But we will still challenge it in court.'" Dallas Morning News, August 15, 1976, at 1, col. 2.

Respondent-NAACP demands racial balance in each school and year-by-year adjustments in such quota assignments. The Respondent-NAACP plan states:

"(a) Every school should have a *racial balance* comparable to the *racial balance* in the District, which will not deviate more than Ten Percent (10%) up or down." (Emphasis ours) (NAACP Ex. 2, p. 7, R. Vol. IV, 6; App., 231, 92-93)

* * *

"2. The first magnitude of desegregation and the attaining of an Unitary School System should be to *achieve a racial balance of black and white* students in each school and then follow through with the integration of other minorities into the system." (Emphasis ours) (NAACP Ex. 2, p. 7, R. Vol. IV, 6; App., 231, 92-93)

* * *

"5. Any set plan should have written into it automatic mechanisms for change based upon conditions which may arise in the community." (NAACP Ex. 2, p. 7, R. Vol. IV, 6; App., 232, 92-93)

* * *

"13. Monitoring procedures are to be so specified that assignment adjustments will be acted upon when trends of racial changes are noted. These procedures are to be made spe-

cific with respect to degrees of change and timing of remedial actions to be taken." (NAACP Ex. 2, p. 8, R. Vol. IV, 6; App., 233, 92-93)

During the course of the trial Mr. E. Brice Cunningham, Respondent-NAACP's lead attorney, on February 19, 1976, advised the Court as follows concerning the propriety of leaving grades K-3 in their current neighborhood schools: (R. Vol. IV, 303; App., 109-110)

"The members of the NAACP can see justification possibly for K through three because we are dealing with young children, the first time in school. I have talked with some teachers and they explained that these kids may lose their or may have problems being there the first time but for nine through twelve there is no justification that we can see."

The Final Order allows grades K-3 to so remain in their neighborhood schools.

The Court of Appeals recognized:

(a) that the School District is the eighth largest urban school district in the country (Estes Pet. App. "C", 131a),

(b) that the School District has been the subject of

desegregation litigation in various actions since 1955 (Estes Pet. App. "C", 132a),

(c) that the primary attack upon the student assignment plan in question is based upon the claim that the plan cannot pass constitutional muster because of the large number of one-race schools it establishes (Estes Pet. App. "C", 132a),

(d) that since 1971 substantial changes have occurred in the School District, residential patterns of Dallas have shifted, many areas are now naturally integrated, what was formerly a majority Anglo school system has become a predominantly minority school system, that in 1971 the school system was 69% (sic 59%) Anglo, and that in 1975 it was 41.1% Anglo, 44.5% Black, 13.4% Mexican-American and 1% "other" (Estes Pet. App. "C", 134a, 135a),

(e) that there may be special considerations involved in devising a school desegregation plan in an urban area with a predominantly minority enrollment that may justify the maintenance of some one-race schools (Estes Pet. App. "C", 134a),

(f) that in devising the plan in question the District Court considered numerous proposals to desegregate the school system, among which were plans submitted by the original Plaintiffs, the NAACP Intervenor, the School District, a Court-appointed expert and a tri-ethnic Amicus Curiae group (Estes Pet. App. "C", 134a), and

(g) that after a voluminous record and holding hearings for over a month on the feasibility and effectiveness of these proposals that the District Court drew a comprehensive plan dealing, *inter alia*, with special programs, transportation, discipline, facilities, personnel, and an accountability system, as well as student assignment (Estes Pet. App. "C", 134a).

At the conclusion of the liability phase of this action on July 16, 1971, (as distinguished from any phase of this case involving the nature and content of any remedial order) the District Court made no findings that any matters pertaining to the operation and management of the business and affairs of the School District or any matters pertaining to the education, curriculum and program aspects of the School District constituted a deprivation by the School District of any rights secured any minority student by the Constitution or laws of the United States. Further, the Court made no findings at the conclusion of the liability phase of this action on July 16, 1971, (Brinegar Pet. App. A, A-1 - A-6) that any student by reason of his or her race, color or national origin had been excluded from participation in, been denied the benefits of, or been subjected to discrimination under any program or activity receiving federal financial assistance as covered by the Civil Rights Act of 1964, including Section 601 of that Act. 42 U.S.C. §2000d.

The Judge of the District Court has presided in this second case from its beginning. From its March 10,

1976, Opinion and Order it is obvious that the District Court has recognized and considered all the many complex factors involved in fashioning a desegregation remedy for the School District. Over the strenuous objections of the School District, the District Court anticipated the subsequent June 27, 1977, decision of this Court in *Milliken II* and ordered comprehensive non-student assignment provisions in the remedy.² Summary examples of the non-student assignment requirements included in the District Court's remedy are set out in Estes Petition Appendix "F", 152a-157a.

The Court of Appeals appears to recognize the careful study and consideration that the District Court had given the case and the many complex factors involved in fashioning the remedy. The Court of Appeals even noted that there may be special considerations involved in devising a school desegregation plan in an urban area with a predominantly minority enrollment that may justify the maintenance of some one-race schools. Nevertheless, the Court of Appeals considered the number of one-race schools as controlling and remanded the case to the District Court for the formulation of a new student assignment plan and for findings to justify the maintenance of any one-race schools that may be a part of that plan.

² Nothing contained in this brief is to be construed as a waiver by the School District of its right on remand to object to the introduction of all evidence and to all parts of any plan or proposal as might pertain to non-student assignment matters and to object to the inclusion of non-student assignment provisions in any remedial order and the School District specifically reserves its right to so object.

SUMMARY OF THE ARGUMENT

A. In addressing the four specific problem areas with respect to the central issue of student assignment, *Swann* left school authorities and lower courts confronted with a serious dilemma — how to reconcile the language pertaining to racial balance or quotas with the language concerning the elimination of every all-Negro and all-white school. The Court of Appeals seized upon one problem area, the number of one-race schools, and elevated it to the controlling factor to resolve the “no racial balance or quota — elimination of one-race schools” dilemma. This was done to accommodate the Respondent-NAACP demand for racial balance. The Court below in effect erroneously construed *Swann* to require that every one-race school must be eliminated. One-race schools cannot be eliminated, and are not required to be eliminated, in this large urban school system given the facts of this case. *Swann*’s comment that school authorities and district judges will necessarily be concerned with the elimination of one-race schools should not be read to require that every one-race school *must* be eliminated or to require findings to justify one-race schools. None of *Swann*’s language addressing that concern can be so construed. Contrary to *Swann*, the Court of Appeals has developed a “per se rule” and made the elimination of all one-race schools the controlling factor to be considered in determining whether a remedy is consistent with the Equal Protection Clause and this Court’s decisions in *Swann* and *Milliken II*. The one-race school

criteria seized upon by the Court of Appeals is an example of how *Green v. New Kent County* thinking can bring lower courts to an erroneous interpretation of *Swann* in cases involving large urban school systems. A national educational crisis exists in large urban school systems because some federal courts refuse to admit that *Swann* must be interpreted in light of the urban condition as it exists in these school systems. The District Court was one federal court that did recognize this fact. New and innovative approaches are appropriate in desegregation matters — “. . . in this field the way must always be left open for experimentation.” *United States v. Montgomery County Board of Education*, 395 U.S. 225, 235 (1969). Otherwise the judicial goal of a plan that promises realistically to work now in such school systems will not be reached.

B. The District Court’s Final Order should be affirmed in its entirety: Respondent-Plaintiffs’ attorneys in seeking and receiving an award of attorneys’ fees have admitted that the District Court’s Final Order affords Black and Mexican-American students the relief sought. The lead counsel for Respondent-NAACP has publicly conceded that Respondent-NAACP does not know how to eliminate certain all-black schools in the School District.

C. The Court of Appeals’ concern with the absence of time and distance studies was unwarranted. The District Court was fully aware of the realities of time and distance. Given the evidence in the record of

demographic housing patterns and changes, the widely separated location of predominantly Anglo students and predominantly minority students, the location of naturally integrated neighborhoods, and the testimony of certain witnesses, the District Court had no need to be concerned with formal time and distance studies. No formal detailed time and distance studies were offered by any party. If the District Court and the parties considered that this case could be decided on the evidence without such studies, then surely the Court of Appeals should have been able to do so. The Court of Appeals' concern for the absence of time and distance studies is but further evidence that the Court of Appeals interprets *Swann* to require that every one-race school must be eliminated.

D. "Vestiges" as used by the District Court in both 1971 and 1976 was employed in the sense of a "trace of something formerly present," i.e., that which had once existed but has passed away or disappeared. The dual system was no more. Only its trace must now be removed from the system. Here the District Court has found only a limited constitutional violation exists — a trace of a former dual system. It is this trace of something formerly present with which we are now concerned. The District Court formulated a plan to remedy only these "vestiges" without exceeding the District Court's equitable powers and responsibility to balance public and private needs. A drastic remedy contemplated by the Court of Appeals with its emphasis on the elimination of all one-race schools is not required or

permitted in this case in order to remove this trace of something formerly present. The judicial task is to correct the condition that offends the Constitution. The District Court's Final Order meets this standard.

E. The District Court correctly refused to follow Respondent-NAACP's "single-minded commitment to racial balance." Recognizing all the complex factors involved, the District Court anticipated the subsequent June 27, 1977, decision of this Court in *Milliken II* and properly considered education-oriented alternatives. The decision of the Court of Appeals does not refer to this Court's opinion in *Milliken II*. Thus the decision of the Court of Appeals in effect interprets *Swann* to mean that the non-student assignment provisions contained in the remedial order in question, including remedial educational programs, are not to be considered as desegregation tools or techniques. The Court of Appeals has made too limited a reading of *Swann* in the light of this Court's decision in *Milliken II*.

F. The Court of Appeals has looked with approval upon the fact that district courts have appointed bi-racial committees to study and make recommendations for school desegregation plans. *Jones v. Caddo Parish School Board*, 487 F.2d 1275, 1276, 1277 (5th Cir. 1973). While the tri-ethnic committee involved here might not have been initially appointed to render this service, the background, origin and development of the District Court's Final Order is tantamount to initial appointment of a tri-ethnic committee to study and make rec-

ommendations. The District Court's Final Order has considerable support in the community among both Anglo and minority citizens. That support is evident from the vote in favor of the \$80,000,000.00 school improvement bond issue at the election held on December 11, 1976. That bond election carried in Black precincts such as the East Oak Cliff area and in South Dallas.

G. *Swann* is to be interpreted in light of the urban condition present in school systems such as Dallas. Unless the District Court's realistic approach to such a school system is affirmed by this Court, desegregation litigation involving these school systems will go on and on over the years and will end only when such school systems become virtually all-black or virtually all-black and Mexican-American. Given the origin and development of the District Court's Final Order and the facts of this case, this is a school desegregation case in which the District Court's Final Order should be approved and affirmed in its entirety and over twenty-four years of litigation brought to a conclusion.

ARGUMENT

Among the issues before the Courts below was the constitutionality of the remedy formulated by the District Court to eliminate the vestiges of a state-imposed dual school system in a large urban school system. In particular a system that is now *minority Anglo*, with an ever decreasing percentage of Anglo students, that now requires a tri-ethnic remedy and which has been

the object of ongoing litigation to formulate a remedy since *Brown II*. It is obvious from the directions given the District Court on remand that the Court of Appeals considered the number of one-race schools to be the controlling criteria for determining the appropriateness of a remedy for such school systems. That is not what this Court said concerning one-race schools in *Swann*. That is not what this Court in effect construed *Swann* to mean in *Milliken II*.

Here, as in *Swann*, the central issue is that of student assignment. *Swann* addressed four specific problem areas with respect to this central issue: (1) racial balance or racial quotas, (2) one-race schools, (3) remedial altering of attendance zones, and (4) transportation of students. (402 U.S. at 22)

However, in addressing those four problems, the Court left school authorities and lower courts confronted with a serious dilemma — how to reconcile *Swann's* language pertaining to racial balance or racial quotas with *Swann's* language concerning the elimination of every all-Negro and all-white school.

The District Court sought to articulate this dilemma in its March 10, 1976, Opinion and Order: (Estes Pet. App. "B", 9a, 10a)

"In adopting a student assignment plan, this Court is required to arrive at a delicate balance — the dual nature of the system must be elim-

inated; however, a quota system cannot be imposed. The Supreme Court ruled in *Swann*, supra at 26, that

[t]he district judge or school authorities should make every possible effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the *elimination of one-race schools*.

"On the other hand, the Supreme Court held that

[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the *racial composition of the school system as a whole*." (Emphasis ours)

The Court of Appeals seized upon one of the problem areas addressed by *Swann*, to wit, the number of one-race schools, and elevated that one problem area to the controlling factor. Elevation of the one-race school problem area to that of primary importance is the means by which the Court of Appeals has resolved this dilemma posed by *Swann's* language.

The "no racial balance or quota - elimination of one-race schools" dilemma of *Swann* leads courts such as the Court below to attempt desegregation through racial balance by focusing on the elimination of one-race

schools as the controlling factor to be considered in determining whether a remedy is consistent with the Equal Protection Clause and this Court's decisions.

In *Keyes v. School District No. 1*, 413 U.S. 189, 200 (1973), this Court pointed out that it has never suggested that plaintiffs must bear the burden of proving de jure segregation as to each and every school or student. The Court of Appeals by its requirement for findings to justify one-race schools has erroneously directed judicial efforts at a remedy toward the individual school rather than school systems.

Unless the District Court orders a racial balance plan, the Court of Appeals may well continue to remand this case until there is finally ordered a plan which eliminates all one-race schools through the use of racial balance or quotas. In doing so the Court below must of necessity ignore facts present in this school system and this Court's holding in *Milliken II*.

Lower court interpretations of *Swann*, as in the Court of Appeals, create such uncertainties with respect to school systems such as Dallas that nothing is resolved. Such lower court readings of *Swann* create such unfortunate social and economic circumstances in metropolitan cities that the results have become a national educational tragedy. All that now occurs under *Swann* with respect to school systems such as Dallas is constant district court hearings, appeals and remands. The District Court had a solution for a

national problem. The Court of Appeals rejected this solution. The decision of the Court of Appeals should be reversed. The decision of the District Court should be affirmed.

In Point I of this brief the School District shall show that the decision of the Court of Appeals is in conflict with this Court's decisions in *Swann* and *Milliken II*. In Point II the School District will discuss the origin of the District Court's Final Order, the need for further word from this Court and why the District Court's Final Order should be affirmed in its entirety.

I.

The Elimination Of All One-Race Schools Is Not The Controlling Factor To Be Considered In Determining Whether The Remedy Formulated By The District Court Is Consistent With The Equal Protection Clause And This Court's Decisions in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, And *Milliken v. Bradley*, 433 U.S. 267 (*Milliken II*).

The Court Of Appeals Has Misconstrued Swann's Holding With Respect To The Central Issue Of Student Assignment And In Particular Swann's Language Concerning The Specific Problem Area Of One-Race Schools.

Swann states the question to be: (402 U.S. at 22)

"(2) whether every all-Negro and all-white school *must* be eliminated as an indispensable part of a remedial process of desegregation;" (Emphasis ours)

Swann does not require that every one-race school *must* be eliminated as an indispensable part of the remedy. But in an apparent effort to judicially sanction the Respondent-NAACP demand for racial balance, the Court below in effect construed *Swann* to require that every one-race school *must* be eliminated as an indispensable part of the remedy. Otherwise there would be no need on remand for District Court findings to justify the maintenance of any one-race schools, as was so pointedly required by the Court of Appeals.

In speaking of the "violation" phase of school desegregation proceedings, this Court in *Washington v. Davis*, 426 U.S. 229, 240 (1976), made clear, "That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause." But as to the "remedy" phase of school desegregation litigation, the Court below was not disposed to permit one-race schools, even given the facts of this case and the special conditions that exist in this large urban school district.

If the existence of predominantly black and predominantly white schools in a community is not alone a violation of the Equal Protection Clause; then the elim-

ination of all one-race schools should not be the controlling factor in determining whether a remedy is consistent with the Equal Protection Clause and this Court's decisions. If such were the case, then the elimination of all one-race schools as such a remedy would be directly contrary to this Court's oft-repeated language in school desegregation cases that the nature of the violation determines the scope of the remedy. (*Swann*, 402 U.S. at 16)

If racial balance or racial quotas are not to be used as an implement in a remedial order, then one-race schools cannot be eliminated in this large urban school system given the demographic phenomena present here. As recognized by this Court in *Swann*, in metropolitan areas minority groups are often found concentrated in one part of the city. (402 U.S. at 25) Such is the case in this School District. But also to be considered here is the location within the School District of naturally integrated areas and schools in relation to the areas containing the remaining predominantly Anglo students and the areas containing predominantly Mexican-American or Black students. The predominantly Mexican-American or Black students reside to the south and southeast in areas distant from the predominantly Anglo students. Separating the remaining predominantly Anglo students and the predominantly Mexican-American or Black students are large portions of the naturally integrated areas and schools. (Maps, Def. Exs. 1, 2 and 3; App., 219, 220, 221)

Nor is the school system required to make continual changes in a mobile society. Change in neighborhood patterns caused by citizens themselves can bring about a desired result as shown by the Court's thinking in *Swann*. (402 U.S. at 25) School systems may rely in part upon their patrons moving about and upon changing neighborhood patterns to eliminate schools of one race. Certainly this has been the solution in many areas of the School District where schools previously serving all-white neighborhoods have become mixed through population changes brought about by changes in neighborhood residential patterns.

Changes in neighborhood residential patterns have in many instances brought about the very number of one-race schools of concern to the Court of Appeals. *Swann* does not hold such school systems responsible for the effect of these changing neighborhood patterns. (402 U.S. at 31) The School District serves a community that is not demographically stable. The School District serves a growing, mobile society in this nation.

At the time of filing of the instant action on October 6, 1970, the School District had operated and conducted its schools since September 1, 1965, pursuant and obedient to a plan of desegregation ordered and directed by the District Court and the Court of Appeals in a prior, pending desegregation proceeding. Any "long history" of the School District in maintaining two sets of schools — one for white and one for black —

came to a complete end on September 1, 1967, as authorized by those Courts in such prior proceeding.

In ordering the racially desegregated single attendance districts within the School District in such prior proceeding, the District Court and the Court of Appeals recognized, authorized and permitted neighborhood schools. This was the culmination of the Black student's struggle to attend the desired one and only neighborhood school serving his place of residence. There was no interference with that struggle by the School District through free transfer or freedom of choice or any other scheme or device. If neighborhood residential patterns reflect schools in the School District in which one race predominates, such a condition results from housing selections made by school patrons after the School District complied with orders of the District Court and the Court of Appeals creating and requiring racially desegregated single attendance districts and not otherwise.³ In the instant case, close scrutiny by the District Court has determined that school assignments are not part of state enforced segregation. (402 U.S. at 26)

Swann's comment that school authorities and district judges will necessarily be concerned with the elimination of one-race schools (402 U.S. at 26) should not be read to require that every one-race school *must* be

³ The School District is cognizant of this Court's observation on "step at a time" plans. Cf. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 435, citing *United States v. Montgomery County Board of Education*, 395 U.S. 225.

eliminated or to require findings to justify one-race schools. None of *Swann's* language addressing that concern can be so construed.

In addressing the matter of concern as to the elimination of one-race schools, *Swann* recognized that "no per se rule can adequately embrace all the difficulties." (402 U.S. at 26) However, the Court of Appeals has developed a "per se rule" and made it the controlling factor. This is evident from the fact that out of the four problem areas addressed by this Court in *Swann*, the Court of Appeals did not require the District Court to make *specific findings* except in one instance — to justify the number of one-race schools.

Nowhere does *Swann* in its discussion of one-race schools require findings to justify one-race schools with respect to this concern. At most *Swann* indicates that the need for remedial criteria of sufficient specificity warrants a presumption against schools that are substantially disproportionate in their racial composition. (402 U.S. at 26) A need that warrants a presumption is not a requirement that every one-race school must be eliminated. The existence of a presumption is not a requirement for findings to justify one-race schools.

Here the burden of showing that school assignments made in the remedy in question are genuinely nondiscriminatory has been met. As required by *Swann*, the District Court has carefully scrutinized the matter of one-race schools. The burden to satisfy the District

Court that the racial composition of schools is not the result of present or past discriminatory action on the part of school authorities has been successfully met to the satisfaction of the District Court.

The one-race school criteria seized upon by the Court of Appeals is an example of how *Green v. New Kent County*⁴ thinking can bring lower courts to an erroneous interpretation of *Swann* in cases involving large urban school systems. In the instant case we are dealing with a system of some 800,000 to 900,000 persons, operating some 183 school buildings with approximately 140,000 students of whom 41.1% were Anglo, 44.5% were Black and 13.4% were Mexican-American. In *Green* the school system operated only two schools in a rural county of some 4,500 population. One was a white combined elementary and high school and one was a Negro combined elementary and high school. The school system served approximately 1,300 pupils, 740 of whom were Negro and 550 of whom were white. Facts and conditions are not the same. It is one thing to think in terms of no one-race schools in New Kent County, Virginia, with only two schools in that entire rural system, but focusing on such an overly simplistic approach in considering a remedy for this large urban system has brought the Court below to an erroneous construction of *Swann* and to a decision in conflict with *Swann* when read in its entirety.

⁴ *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

A national educational crisis exists in large urban school systems because some federal courts refuse to come to grips with the fact that *Swann* must be interpreted in light of the urban condition as it exists in these school systems. The District Court was one federal court that did recognize that *Swann* must be interpreted in light of the urban condition in such school systems. The District Court's March 10, 1976, Opinion and Order well states the anguish and agony that district courts must go through in formulating remedies in such school systems. In the District Court's language in part:

"In this complex and ever-changing area of the law, it is difficult if not impossible to discover hard and fast rules for the Court to follow."
(Estes Pet. App. "B", 7a)

"... school districts are like fingerprints — each one is unique. Although the goal of a unitary, non-racial system is a constant, the method or plan for achieving that goal must be tailored to fit the particular school district involved. A plan that is successful in a district having a small student population or occupying a small area geographically, a rural district, a county-wide district, or a majority Anglo school district, will not necessarily be successful in a large urban district such as the DISD." (Estes Pet. App. "B", 8a)

This Court has recognized that new and innovative approaches are appropriate in desegregation matters — “. . . in this field the way must always be left open for experimentation.” *United States v. Montgomery County Board of Education*, 395 U.S. 225, 235 (1969). Granted that the judicial goal must be the development of a decree that promises realistically to work and promises realistically to work now, it nevertheless defies all logic and common sense to refuse to allow a district court to choose a plan that takes into account the urban condition in such school systems. Otherwise the judicial goal of a plan that promises realistically to work now in such school systems is reduced to a shambles.

Stripped of all desegregation rhetoric, the decision of the Court of Appeals is an erroneous effort to require the District Court to order racial balance in each school. This is the very solution sought by Respondent-NAACP as made abundantly clear in its desegregation plan filed with the District Court. The requirement of racial balance has been pointedly rejected by this Court. *Swann*, 402 U.S. at 24; *Milliken v. Bradley*, 418 U.S. 717, 740, 741 (1974).

This Court is urged to make known to the nation's lower courts that the discussion in *Swann* of one-race schools while addressing four specific problem areas with respect to student assignment is not to be construed in such a way as to indirectly achieve that which is not required, to wit, racial balance.

Actions And Admissions Of The Respondent-Plaintiffs And The Respondent-NAACP Are Contrary To The One-Race School Criteria Seized Upon By The Court Of Appeals.

Both the District Court and the Court of Appeals have recognized Respondent-Plaintiffs as representative of the class of Black and Mexican-American students in the School District.

Both of Respondent-Plaintiffs' plans have been abandoned by Respondent-Plaintiffs in this action. Respondent-Plaintiffs' attorneys in seeking an award of attorneys' fees have admitted that the District Court's Final Order affords Black and Mexican-American students the relief sought.

The lead counsel for Respondent-NAACP has admitted publicly that Respondent-NAACP does not know how to eliminate certain all-black schools in the School District. If, in the words of Respondent-NAACP's counsel, the Respondent-NAACP has “. . . not yet come up with an alternative to some all-black schools,” then the Court of Appeals should not read *Swann* to require the District Court to be wiser than Respondent-NAACP.

Neither Respondent-Plaintiffs nor Respondent-NAACP should be heard to urge on behalf of Black students a remand to the District Court for the formulation of a new student assignment plan and for find-

ings to justify the maintenance of any one-race schools that may be a part of that plan as ordered by the Court of Appeals. Both the School District and the Courts should be spared the constant litigation that of necessity results when separate litigants representing members of the same alleged class of students cannot agree upon the nature and propriety of the relief obtained in a school desegregation proceeding.

Actions and admissions of Respondent-Plaintiffs and Respondent-NAACP do not support the "one race school remand" of the Court of Appeals. The Court of Appeals had no need or justification on this record to promulgate its own "per se rule" as to the number of one-race schools in order to remand.

Time And Distance Studies Were Not Necessary.

The Court of Appeals' concern for the absence of time and distance studies in the record and the consequences of such absence is unnecessary under the particular facts of this case. The Court of Appeals has erroneously assumed that the District Court was completely unaware of the realities of time and distance. In fact, however, the District Court was well aware of the realities of time and distance. In setting forth its student assignment criteria within subdistricts, the District Court states, "8. Transportation distance and time are minimized to the extent possible." (Estes Pet. App. "B", 56a, 57a)

Given the evidence in the record of demographic housing patterns and changes, the widely separated location of predominantly Anglo students and predominantly minority students, the location of naturally integrated neighborhoods, and the testimony of the witnesses, Dr. Charles V. Willie, Mr. Edward B. Cloutman, III, and Dr. Paul Geisel, the District Court had no need to be concerned with formal time and distance studies nor should the Court of Appeals have been concerned with formal time and distance studies under the record in this case.

Formal time and distance studies would have only encumbered the record. There was no need to formally summarize the obvious. The obvious was certainly recognized by Respondent-Plaintiffs as to East Oak Cliff in the thrice repeated language of their own — but now abandoned — Plan B and by the testimony of their own attorney-witness, Mr. Edward B. Cloutman, III, given in explanation of that language.

The fact that no formal detailed time and distance studies were offered by any party should indicate that such studies were not required in this particular school desegregation case.

For the Court of Appeals to become overly concerned by the absence of formal time and distance studies which neither the District Court nor any party considered necessary is but further example that the Court of Appeals considered the number of one-race

schools to be the controlling criteria for determining the appropriateness of the remedy formulated by the District Court. If the District Court and the parties considered that this case could be decided on the evidence without such studies, then surely the Court of Appeals should have been able to do so.

Elimination Of All One-Race Schools Cannot Be The Controlling Factor When The District Court Is Formulating A Remedy To Eliminate The Vestiges Only Of A State-Imposed Dual System.

Cases such as this represent one of the great judicial fictions of our time. Since August of 1971, this School District has been operating under United States District Court "statute or constitution," i.e., desegregation remedies — including student assignment provisions — ordered by a federal court. Regardless of whether those remedies have survived Court of Appeals review, this United States District Court "law" has governed large parts of this School District's operations since the 1971-1972 school year. This many years after *Brown I* there is no way to unscramble the so-called "vestiges" of a dual system imposed by state "law" from the "vestiges" of United States District Court "law". To pretend otherwise is pure fiction. At least the District Court has sought to be intellectually honest in its approach.

In its March 10, 1976, Opinion and Order the District Court explained that in the present case we are in-

volved only with "vestiges" of a state-imposed dual system and went on to point out that its findings in 1971 were that the "vestiges" of a dual system remained; not that the School District was a dual system in 1971. In the District Court's language: (Estes Pet. App. "B", 12a)

"This Court has kept in mind throughout these proceedings that its findings in 1971 were that the 'vestiges' of a dual school system remained in the DISD, and not that the DISD was a dual system at that time. The plan adopted now must therefore remedy these vestiges without exceeding this Court's equitable powers to balance public and private needs."

"Vestiges" as used by the District Court in both 1971 and 1976 was employed in the sense of a "trace of something formerly present," (*Webster's Third New International Dictionary*, G. & C. Merriam Company, Publishers, Springfield, Massachusetts, 1971, p. 2547), i.e., that which had once existed but has passed away or disappeared. The dual system was no more.⁵ Only its trace must now be removed from the system.

Nowhere does the Court of Appeals question the findings and explanation made by the District Court in

⁵ Accordingly, the District Court's finding in its July 16, 1971, Memorandum Opinion that elements of a dual system still remain (Brinegar Pet. App. A, A-2) is not to be read as a holding that the School District was a dual system in whole or in part in 1971.

this regard, or acknowledge that it is only the most limited of constitutional violations — a trace — which is to be remedied in the School District.

The District Court did not have before it a stubborn obstinate southern school system untouched by judicial hands or unaware of its responsibilities to operate a unitary system. The most that the District Court found in 1971 was a trace of something formerly present. A drastic remedy is not required. The judicial task is to correct the condition that offends the Constitution. The student assignment plan contained in the District Court's Final Order meets this standard. This Court has sought to make clear to the lower courts the very important principle of equity jurisprudence that the scope of the remedy is determined by the nature and extent of the constitutional violation.

The District Court has recognized the strides that the School District has made to provide equal educational opportunity for all and is aware of the results of natural changes in residential patterns over the years. (Estes Pet. App. "B", 14a-18a)

Without doubt this Court in *Swann* sought to make known to the lower courts that there should be an end to a desegregation case. Otherwise, there would have been no necessity for this Court to speak of "the interim period" when remedial adjustments in attendance zones are being made to eliminate dual school systems. (402 U.S. at 28) Use of the word "interim"

suggests a temporary period in the federal court house; not a permanent state of litigation. Further, there would have been no necessity for this Court in *Swann* to recognize that at some point school systems would be "unitary" even in a growing mobile society and to specifically hold that neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. *Swann*, 402 U.S. at 31, 32; *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976)

Here the District Court has found only a limited constitutional violation exists — a trace of a former dual system. It is this trace of something formerly present with which we are now dealing in the School District. The District Court formulated a plan to remedy only these "vestiges" without exceeding the District Court's equitable powers and responsibility to balance public and private needs. A drastic remedy contemplated by the Court of Appeals with its emphasis on the elimination of all one-race schools is not required or permitted in this case in order to remove this trace of something formerly present.

The Court Of Appeals Should Have Considered And Determined The Non-Student Assignment Provisions Of The Remedy Formulated By The District Court As Appropriate Tools Or Techniques Of Desegregation

Consistent With The Equal Protection Clause And This Court's Decision In Milliken II.

In *Milliken II*, this Court determined that the four educational components which had been ordered by the District Court for Detroit and were at issue before this Court were tools or techniques of desegregation. These educational components *prospectively* were designed to wipe out conditions of inequality produced by a dual school system and to bring about the delayed benefits of a unitary system. (433 U.S. at 290)

The decision of the Court of Appeals does not refer to this Court's opinion in *Milliken II*. Thus the decision below in effect interprets *Swann* to mean that the non-student assignment provisions contained in the remedial order in question, including remedial educational programs, are not to be considered as desegregation tools or techniques. The Court of Appeals has made too limited a reading of *Swann* in the light of this Court's decision in *Milliken II*. Contrary to *Milliken II*, the Court of Appeals has decided that certain remedial educational programs may not be considered as desegregation tools or techniques.⁶

The Judge of the District Court has presided in this case from the beginning. From its March 10, 1976,

⁶ The School District approves of the Court of Appeals' handling on remand of the non-student assignment portions of the Final Order under review. Such an approach was fair, just and appropriate on remand in view of the School District's admittedly unique position in this appeal as noted by the Court of Appeals in footnote 8 of the decision. (Estes Pet. App. "C", 135a)

Opinion and Order it is obvious that the District Court has a thorough knowledge of the School District and has recognized and considered student ethnic composition, housing patterns, geography, time, distance, natural boundaries, traffic considerations, "practicalities," age, health and safety of students, equal educational opportunity, and all other factors involved in applying techniques for desegregation.

Consequently the District Court could not help but realize that the location of naturally integrated neighborhoods and the widely separated residential locations of Anglo students and minority students would not permit effective additional pairing and clustering or new attendance zones and that the widely separated location of Anglo students and minority students considered in the light of time and distance, natural boundaries, traffic considerations and other factors together with the minority Anglo composition of the School District's students dictated against the feasibility of additional transportation.

But the District Court did not let such obstacles stop its efforts to fashion an appropriate remedy. Recognizing all the complex factors involved, and over the strenuous objections of the School District, the District Court anticipated the subsequent June 27, 1977, decision of this Court in *Milliken II* and included the non-student assignment provisions in its remedial order.

In *Milliken II* (footnote 3, 433 U.S. at 271), this Court took note of the fact that of the total Detroit student

population 71.5% were Negro and 26.4% were white and the remaining 2.1% were comprised of students of other ethnic groups. In Dallas, as in Detroit, the District Court had to deal with the realities of a minority Anglo school system.

The rationale for affirmance of the District Court's Final Order in its entirety is to be found in *Integration Ideals and Client Interests*, 85 Yale L.J. 470 (March, 1976)⁷ Professor Bell presents an effective argument as to why the traditional NAACP approach to racial balance and busing in large predominantly minority school systems will not work and is self-defeating. The author suggests that the time has come for the NAACP to end its "single-minded commitment to racial balance" and consider education-oriented alternatives. He argues that the courts can properly afford that relief in remedial orders. In the author's language:

"In the last analysis, blacks must provide an enforcement mechanism that will give educational content to the constitutional right recognized in *Brown*. Simply placing black children in 'white' schools will seldom suffice. Lawyers in school cases who fail to obtain judicial relief that reasonably promises to im-

⁷ The article identifies the author, Derrick A. Bell, Jr., as a Professor of Law at Harvard University who from 1960 to 1966 was a staff attorney specializing in school desegregation cases with the NAACP Legal Defense Fund and from 1966 to 1968 was Deputy Director, Office for Civil Rights, U.S. Department of Health, Education and Welfare.

prove the education of black children serve poorly both their clients and their cause." Bell, at 514, 515.

* * *

"But civil rights groups refuse to recognize what courts in Boston, Detroit, and Atlanta have now made obvious: where racial balance is not feasible because of population concentrations, political boundaries, or even educational considerations, there is adequate legal precedent for court-ordered remedies that emphasize educational improvement rather than racial balance." Bell, at 487.

* * *

"Conclusion

"The tactics that worked for civil rights lawyers in the first decade of school desegregation — the careful selection and filing of class action suits seeking standardized relief in accordance with set, uncompromising national goals — are no longer unfailingly effective. In recent years, the relief sought and obtained in these suits has helped to precipitate a rise in militant white opposition and has seriously eroded carefully cultivated judicial support. Opposition to any civil rights program can be expected, but the hoped-for improvement in schooling for black children that might have justified the sacrifice and risk has proven minimal at best. It has

been virtually nonexistent for the great mass of urban black children locked in all-black schools; many of which are today as separate and unequal as they were before 1954.

"Political, economic, and social conditions have contributed to the loss of school desegregation momentum; but to the extent that civil rights lawyers have not recognized the shift of black parental priorities, they have sacrificed opportunities to negotiate with school boards and petition courts for the judicially enforceable educational improvements which all parents seek. The time has come for civil rights lawyers to end their single-minded commitment to racial balance, a goal which, standing alone, is increasingly inaccessible and all too often educationally impotent." Bell, at 515, 516.

The District Court refused to follow a "single-minded commitment to racial balance." The District Court has accepted the concept that the Fourteenth Amendment permits remedial educational programs to be used as desegregation tools or techniques. On the other hand, the Court of Appeals by its refusal to even refer to or discuss this Court's decision in *Milliken II* has made known to school authorities and district courts that it rejects this concept under the facts of this large urban school system. By its remand the Court of Appeals demonstrated that it considers racial balance to be the only solution in large urban school systems,

regardless of the facts and circumstances in any given large urban school system.

II.

Why The District Court's Final Order Should Be Affirmed In Its Entirety.

The District Court's Final Order represents a concept and recommendation arrived at by a tri-ethnic group of citizens. The Court of Appeals views such a procedure favorably and has looked with approval upon the fact that district courts have appointed bi-racial committees to study and make recommendations for school desegregation plans. *Jones v. Caddo Parish School Board*, 487 F.2d 1275, 1276, 1277 (5th Cir. 1973). While in Dallas this tri-ethnic group might not have been initially appointed to render this service, the background, origin and development of the District Court's Final Order is tantamount to initial appoint of a tri-ethnic committee to study and make recommendations.

The District Court's Final Order represents a compromise negotiated by a tri-ethnic group of citizens with the District Court's approval. That compromise involves both student assignment and non-student assignment provisions. No Respondent should be heard to complain of only the part with which he does not agree (the student assignment plan) and yet seek to retain the benefits of the part of which he approves and desires to have imposed on the School District (the

non-student assignment provisions). The two parts together constitute the District Court's total and complete remedy. The District Court's Final Order should not be approached on the basis that the student assignment provisions should be reversed and the non-student assignment provisions left standing.

The District Court's Final Order has considerable support in the community among both Anglo and minority citizens. That support is evident from the vote in favor of the \$80,000,000.00 school improvement bond issue at the election held on December 11, 1976, following implementation of the District Court's Final Order with the opening of the 1976-77 school year the preceding August. That bond election carried in Black precincts such as the East Oak Cliff area and in South Dallas. Unhappy school patrons — be they Anglo, Black or Mexican-American — are not known to vote in favor of school improvement bonds. This is particularly the case where the public is antagonistic toward a school desegregation remedy imposed by the courts.

If desegregated school systems in large urban metropolitan centers are the true goal, then that objective becomes an impossibility when public education is required to exist under conditions that do not appeal to many school patrons. The constant uncertainty and pressure of endless school desegregation litigation is such a condition; as is the resulting prospect of ever expanding busing in a large metropolitan area. Faced with this predicament, parents seek a more satisfactory

state of affairs elsewhere; some in the suburbs, some in private or church-related schools. Their search is not always related to a racial bias but to their sense of frustration with a situation that decreases the total educational opportunity for their child. Uncertainty destroys parents' patience and confidence. It is not just Anglos who become dissatisfied with these adverse circumstances in urban school districts. Black families and Mexican-American families value education also; and they will avoid these conditions as they can, just as Anglos do when they can.

Mr. Justice Marshall observed in his dissent in *Milliken I*, 418 U.S. at 801, that this Court in *Wright v. Council of the City of Emporia*, 407 U.S. 451, 464 (1972), took the possibility of white flight into account in evaluating the effectiveness of a desegregation plan. Perhaps it is time to think in terms of "upper and middle class flight" and to take that possibility into account in evaluating the effectiveness of a desegregation plan. Upper and middle class flight by people of all ethnic origins involves more than movement out of a given school system. Once a promotion or change in employment occurs and a family moves from one locality to another, there is reluctance to move into a particular school system known to be in constant desegregation litigation.⁸

⁸ The argument here made pertains to demographic changes that are the result of the constant uncertainty and unrelenting pressure of never ending school desegregation litigation. The argument here made does not refer to "white flight" or any other "flight" traceable to the requirements and provisions of a desegregation decree. Cf. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 435.

The School District is cognizant of the Court of Appeals' earlier 1975 observations that the School District is no stranger to school desegregation proceedings. The School District earnestly seeks to become a stranger to school desegregation proceedings. The School District accepts the District Court's Final Order in its entirety. Given the origin and development of the District Court's Final Order and the facts of this case, this is a school desegregation case in which the District Court's Final Order should be approved and affirmed in its entirety and over twenty-four years of litigation brought to a conclusion.

To this end it should be made clear to the lower courts that *Swann* is to be interpreted in light of the urban condition present in school systems such as Dallas. Unless the District Court's realistic approach to such a school system is affirmed by this Court, desegregation litigation involving these school systems will go on and on over the years and will end only when such school systems become virtually all-black or virtually all-black and Mexican-American. Unitary these school systems may then be, but virtually all-black or all-black and Mexican-American they will be also.

If in the urban condition Blacks, Anglos and Mexican-Americans are to establish a harmonious, peaceful and civilized existence based upon a school desegregation plan that "works," then new and innovative approaches are required of school authorities and courts with respect to remedies to eliminate the

vestiges of a state-imposed dual school system in large urban school systems. Not only that, but there must be some hope that ever pending desegregation litigation will at some time come to a final and conclusive end, so that the uncertainty and turmoil over student assignment plans will leave center stage to the educational process.

Further word from this Court is needed to once and for all make known that *Swann's* language pertaining to the elimination of all one-race schools is not to be used as a subterfuge to cause racial balance to become the only acceptable remedy.

In order to eliminate the vestiges of a state-imposed dual school system in the large urban school system here involved — and contrary to the decision of the Court of Appeals — the elimination of all one-race schools is not the controlling factor to be considered in determining whether a remedy formulated by the District Court is consistent with the Equal Protection Clause and this Court's decisions in *Swann* and *Milliken II*.

CONCLUSION

The judgment of the Court of Appeals, insofar as it remanded the case to the District Court for the formulation of a new student assignment plan for the Dallas Independent School District and for findings to justify the maintenance of any one-race schools that may be a

part of that plan, should be reversed and the District Court's Final Order should be approved and affirmed in its entirety by this Court.

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May 1979

PROOF OF SERVICE

We, Warren Whitham and Mark Martin, Attorneys for Petitioners herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of May, 1979, we served three copies of the foregoing Brief for the Petitioners upon the following Counsel for Respondents:

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We further certify that all parties required to be served have been served.

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MAY 7 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-282

DONALD E. CURRY, ET AL.,

Petitioners,

versus

DALLAS N.A.A.C.P., ET AL., and
NOLAN ESTES, ET AL.,

Respondents.

No. 78-253

NOLAN ESTES, ET AL.,

Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,

Respondents.

No. 78-283

RALPH F. BRINEGAR, ET AL.,

Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS, DONALD E. CURRY, ET AL

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OCTOBER TERM, 1978

No. 78-282

DONALD E. CURRY, ET AL.,
Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,
and
NOLAN ESTES, ET AL.,
Respondents.

No. 78-253

NOLAN ESTES, ET AL.,
Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,
Respondents.

No. 78-283

RALPH F. BRINEGAR, ET AL.,
Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS,
DONALD E. CURRY, ET AL

TO THE HONORABLE COURT:

OPINION BELOW

The opinion of the Court of Appeals (Appendix C
Petition for Writ of Certiorari of Nolan Estes, et al,
130a-146a) is reported at 572 F.2d 1010.

JURISDICTION

Judgment of the Court of Appeals was entered on
April 21, 1978. A timely petition for rehearing en banc
filed by these Petitioners was denied on May 22, 1978.
The Petition for Certiorari was filed August 19, 1978
and was granted February 20, 1979. The jurisdiction of
this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. In the absence of evidence or a finding that
racial imbalance resulted from intentional segregative
action on the part of the Dallas Independent School
District, do the District Court and Court of Appeals
have the power to order student reassignment?
2. Can there be a vestige of a State-imposed dual
school system in the Dallas Independent School Dis-
trict when no child presently attending schools in that
district has ever been assigned to a school except under
a plan mandated by the United States Courts?
3. Does the Constitution require the imposition of
a remedy which the overwhelming evidence demon-
strates not only fails to remedy the problem at which it
is directed, but exacerbates the problem?

CONSTITUTIONAL AND STATUTORY PROVISIONS

Pertinent constitutional and statutory provisions in-
volve the equal protection clause of the Fourteenth

Amendment to the Constitution of the United States and the actions of Congress with respect to the subject of education, student assignment, and equal protection. Such provisions read in pertinent parts as follows:

14th Amendment, U.S. Constitution:

Nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.

20 U.S.C. §1701 (Equal Educational Opportunity Act):

the failure of an educational agency to attain a balance on the basis of race, color, sex or national origin of students among its schools shall not constitute a denial of equal educational opportunity or equal protection of the laws.

20 U.S.C. §1712:

In formulating a remedy for denial of equal educational opportunity or denial of equal protection of the laws, a court, department or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of laws.

20 U.S.C. §1705:

The assignment by an educational agency of a student to a school nearest his place of residence which provides appropriate grade level and type of education for such student is

not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex or national origin or the school to which such student is assigned is located on its site for the purpose of segregating students on such basis.

SUMMARY OF ARGUMENT

Petitioners Curry et al urge that the Fifth Circuit and District Court decisions below be reversed and rendered and this case terminated by dismissal of the complaints for the following reasons:

1. In 1965 a racially neutral neighborhood assignment plan was adopted and mandated by the Fifth Circuit Court of Appeals in *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965). This decision was unappealed and unchallenged for five years until this present suit was commenced to remedy imbalance in the Dallas schools not caused by an intentional segregative action of the Dallas Independent School District and in part arising after 1965 as a result of the Court of Appeals order. Having adopted a racially neutral plan, the Courts cannot revise its effects because of racial imbalance. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 49 L.Ed.2d 599 (1976).

2. In the absence of a showing of a constitutional violation, which has been held by the District Court not

to have occurred, no remedy can be ordered. The District Court in 1971 held that racial imbalance came about as a result of private housing patterns and not as a result of actions by the school district. With such a finding the case must be reversed and rendered dismissing the complaint. *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 53 L.Ed.2d 851 (1977).

3. Even if a post 1965 constitutional segregative action by the Dallas Independent School District is found (and Petitioners Curry et al know of none) it did not have an effect on the racial imbalance in the District, and a remedy of student reassignment or busing does not address the violation. *Dayton Board of Education v. Brinkman*, *supra*.

4. As a tool the remedy of "busing" or student reassignment is ineffective to desegregate and has destroyed any chance for a stable integrated school system. The Constitution does not require the elimination of neighborhood schools if drawn on racially neutral lines, simply because voluntary housing patterns create racial imbalance, especially where voluntary majority to minority transfer policies permit children to attend any school in which their race is a minority if transferring from a school in which the student's race is in the majority.

STATEMENT

Since 1965 the assignment of every student in the Dallas Independent School District ("DISD") has been

mandated by the United States Courts.¹ In 1965 the Court of Appeals for the Fifth Circuit in *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965) ordered the immediate assignment of students to neighborhood schools without regard to race. That order was not appealed. The DISD complied with that order, and student assignment within the DISD has continuously since that date been pursuant to whatever the District Court or the Court of Appeals for the Fifth Circuit ordered. *Tasby v. Estes*, 444 F.2d 124 (5th Cir. 1971). As a result, no child presently in the twelve grades in the DISD has ever attended a school except by an assignment mandated by the United States Courts.

The present case, a new one, was filed in 1970 by Plaintiffs Tasby, et al; such plaintiffs complained of racial imbalance (in part caused by the 1965 order of the Fifth Circuit) and asked for "meaningful desegregation" of the DISD in accordance with *post-1965* decisional law. The complaint pointed principally to racial imbalances in DISD schools, as its basis for requesting "meaningful desegregation." 517 F.2d 92 at 96. On July 16, 1971, based on its interpretation of *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 28 L.Ed.2d 554. (1971) ("*Swann*"), the District Court ordered a student assignment plan upon a finding that

¹ The opinions which constitute "the present controversy" are as follows: (1) *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965). (2) *Tasby v. Estes*, 342 F.Supp. 945 (N.D.Tex. 1971) (sometimes called "*Tasby-1971*"), *reversed*, *Tasby v. Estes*, 517 F.2d 92 (5th Cir. 1975) (sometimes called "*Tasby-1971*"). (3) *Tasby v. Estes*, 412 F.Supp. 1192 (N.D.Tex. 1976) (sometimes called "*Tasby-1976*"), *reversed*, *Tasby v. Estes*, 572 F.2d 1010 (5th Cir. 1978) (sometimes called "*Tasby-1978*").

When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that *all vestiges* of the dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of the dual system still remain. 342 F.Supp. at 947. [Emphasis added.]

The District Court's 1971 student reassignment plans were based solely upon the finding of a racial imbalance among the DISD schools as set forth above. The only "fault" which the District Court found with the DISD was that it did not on its own make changes to accommodate *post-1965* law changes regarding faculty and staff assignments, voluntary majority to minority transfers and transportation, and school construction and site selection. 342 F.Supp. at 947-48. The DISD voluntarily agreed to the desegregation of faculty, the majority to minority transfer policy, transportation of such students electing majority to minority transfer, and the appointment of tri-racial committees at the beginning of the 1971 trial. *There is no finding of any other discriminatory action by the Dallas Independent School District anywhere in the record before this Court.*

With respect to the racial imbalance among the schools the District Court found that there were only "vestiges" of a dual school system — *not* that the DISD *was* a dual school system. 342 F.Supp. at 947. (See also the same observation in the 1976 District Court opinion at 412 F.Supp. at 1196). The court found that such "vestiges" or racial imbalances did not result from any acts of the DISD. Instead, it found:

The adoption of a plan of desegregation for a school system of the size and complexity of DISD has been commented upon briefly. *The problems result, of course, from private housing patterns that have come into existence and not from any action of the DISD.* The complex school districts bear little resemblance to the factual situation of *Green* or even the fact situation of *Swann* which served 84,000 pupils in 107 schools. 342 F.Supp. at 951. [Emphasis added.]

In its "Supplemental Opinion" on August 17, 1971, the District Court, with respect to the area of Oak Cliff presently complained of by the Dallas N.A.A.C.P., also found:

The education through a wide-course selection being available as chosen by the student should not be made to suffer for the purpose of arbitrary racial mixing *to alleviate a condition which, in this particular section of the school district, results primarily from private housing patterns coming*

into existence since 1965 and not from any action of the DISD. 342 F.Supp. at 956. [Emphasis added.]

Not only did the District Court have no specific findings of intentional segregative intent in connection with any existing student school assignment, or "vestiges," the District Court in its August 2, 1971, order found and held "the Board of Education of DISD [to be] in good faith and committed to the principle of equal quality education." 342 F.Supp. at 950.

Four years later, on appeal, the Fifth Circuit woodenly interpreted the Supreme Court's decisions to make "it clear that nothing less than the elimination of predominantly one-race schools is constitutionally required in the disestablishment of a dual school system based upon segregation of the races." 517 F.2d 92 at 103. On that basis, the Fifth Circuit remanded and directed the district court "to formulate . . . elementary and secondary student assignment plans which comport with the directives of the Supreme Court and of this opinion," without direction as to what that means. 517 F.2d at 110.

In early 1976, the District Court conducted the extensive evidentiary hearings that form the record in this proceeding. The District Court, pursuant to the instructions of the Fifth Circuit, construed its task to be the elimination "from the public schools [of] all vestiges of state-imposed segregation." 412 F.Supp. at 1193, 1195. After allowing the NAACP to intervene at that

stage, the Court proceeded to hear evidence from the DISD, the plaintiffs, Petitioners Curry, et al, Petitioners Brinegar, et al, the NAACP, and others. Based on what it had already heard in 1971 and the later evidence, the District Court again did *not* make any finding of a constitutional violation, or of a denial of any student's right to equal protection, or of the extent in the DISD of the effects of any such violation, or of the amount of remedy that would cure such effects insofar as found. Instead, the court made the following findings, which Petitioners Curry, et al submit are critical to this court:

The most significant feature of the DISD now as opposed to 1971 is that the DISD is no longer a predominantly Anglo student school system. In the years which have intervened since this Court's 1971 order, the percentage of Anglos in the DISD has declined from 69% to 41.1%, and projections show no reversal of this trend to a predominantly minority district. 412 F.Supp. at 1197.

* * *

Although the DISD in 1975-76 cannot be considered to be wholly free of the vestiges of a dual system, significant strides in desegregation have been made since the Court's 1971 order as a result of natural changes in residential patterns in the past three years. In the 1970-71 school year, 91.7% of all black

students in the DISD attended predominantly minority schools, whereas in the 1975-76 school year, the percentage has dropped to 67.6%. Testimony during the hearings showed that large areas of Dallas which formerly reflected segregated housing patterns are now integrated, namely Western Oak Cliff, Pleasant Grove, East Dallas, the area of North Dallas included in the attendance zone for Thomas Jefferson High School.

Testimony also established that the DISD has undertaken in good faith and on its own to equalize the educational opportunity for all children during recent years. 412 F. Supp. at 1197.

* * *

In spite of the DISD's efforts, Dr. Chase's² study concluded that there is still a gap between intent to provide equal educational opportunity and the achievement of this goal. But the study also concluded that the DISD is accepting the continuing challenge to speed progress and close this gap.

² An educational expert hired by the DISD to give an independent and impartial assessment of its plans and programs. 412 F. Supp. 1197.

The Dallas Independent School District in recent years, has acknowledged frankly the existence of persisting inequalities and inadequacies in its provisions for education. Instead of regarding these conditions as inevitable, the District has moved progressively to treat them as challenges with which it must cope swiftly and effectively. All school systems, and especially those in our larger cities, are faced with the urgent necessity of alleviating the learning disabilities which have their roots in poverty, prejudice, and other forms of discrimination. No other school district offers a better prospect for significant progress in this direction. [quoting from Dr. Chase's study]

The study thoroughly evaluated the DISD's programs, pin-pointing areas which needed improvement and making recommendations to that end. Dr. Chase testified that this study was unique in the amount of response it elicited from the School Board and the Administration; he testified that there is not one item cited that the Board and Administration have not responded to in some way. His testimony was that there can never be a perfect school system, but that at least the DISD is conscientiously on the road to providing equal educational opportunity for all. 412 F. Supp. at 1198.

* * *

[With regard to a feature of the plan adopted that left the area of South Oak Cliff almost entirely black in school attendance:]

... The court is of the opinion that, given the practicalities of time and distance, and the fact that the DISD is minority Anglo, this sub-district must necessarily remain predominantly minority or black. However, this does not mean that the goal of equal educational opportunity for all cannot be achieved. In terms of facilities, Dr. Hall³ testified that with the exception of Budd and Harlee Elementary Schools and the site at Roosevelt High School, the facilities in this area can be categorized as superior. Additionally, Dr. Hall testified that the environment in which each center is located, i.e., the property immediately adjacent to the schools, as well as the residential area served by them, can be classified as superior. Dr. Hall testified that educational opportunities in terms of facilities or programs would not be improved by complete redistribution of all pupils, and in some situations, they would be lessened. 412 F.Supp. 1204.

³ Dr. Josiah Hall, an expert hired and appointed by the District Court to evaluate the DISD and to develop a plan of his own. 412 F. Supp. 1194.

[With regard to a feature of the plan that left grades 9-12 on a neighborhood basis but which called for magnet schools:]

... The Court is convinced that the magnet school concept on the 9-12 grade level will be more effective than the assignment of students to achieve a certain percentage of each race in each high school. The Court tried this method of student assignment in 1971, and it has not proven wholly successful in achieving the goal of eliminating the vestiges of a dual system in these grades. The evidence shows that of approximately 1,000 Anglos ordered to be transported to formerly all-black high schools under this Court's 1971 student assignment plan, fewer than 50 Anglo students attend those schools today. Whatever the cause might be for the non-attendance of Anglos in those schools today, this Court finds that it can in no way be attributed to official actions on the part of school authorities. 412 F.Supp. 1205.

It should also be noted that changes in demographic patterns have resulted in the drastic reduction of predominantly Anglo high schools in the DISD. 412 F.Supp. 1205.

The most realistic, feasible, and effective method for eliminating the remaining

vestiges of a dual system on the 9-12 level, and for providing equal educational opportunity without regard to race, is the institution of magnet schools throughout the DISD. 412 F.Supp. 1205.

* * *

The DISD has acted in good faith since this Court's order in 1971 and has made reasonable efforts to fulfill the obligations imposed by that order. The DISD has further taken good faith steps to eradicate inequality in educational opportunity which has previously existed in the DISD. Had the DISD not shown a willingness to improve the quality of education for all its students, and especially those in the minority areas which previously had been neglected, this Court might feel impelled to adopt a different remedy. 412 F.Supp. at 1207.

In spite of these findings, in response to the mandate of the Circuit Court, the District Court adopted a plan that provided for the busing of approximately 17,300 students in grades 4-8, a majority to minority transfer plan, magnet schools, a rigid plan for the ethnic make-up of the top echelon of DISD staff (44% white — 44% black — 12% Mexican-American), numerous "accountability" concepts, and other non-busing provisions. 412 F.Supp. 1192. The District Court felt the plan was necessary to remove all "vestiges" — as it had been ordered to do by the Fifth Circuit.

Following in its former footsteps, the Fifth Circuit again woodenly rejected the District Court's student assignment plan, not because, as Petitioners Curry et al urged, it was constitutionally improper and outside the power of the court under recent decisions of the Supreme Court, but solely because of the existence of one race schools and the claim that there were not "adequate time-and-distance studies in the record in this case." 572 F.2d at 1014. The Fifth Circuit, ignoring all the specific trial findings quoted above, stated it "cannot properly review any student assignment plan that leaves many schools in a system one race *without specific findings by the district court as to the feasibility of these techniques.*" *Ibid.* In its mandate, the Fifth Circuit in effect acknowledged that it really was only giving lip-service to any district court findings; because it remanded for "the formulation of a *new* student assignment plan and for findings to justify the maintenance of any one-race schools that *may be* a part of *that* plan." (Emphasis added.) 572 F.2d at 1018. The Fifth Circuit challenged none of the above findings as being clearly erroneous.

ARGUMENT

The real question before this Court is whether there should have been any order for a student assignment plan *other* than the one that was approved by the Fifth Circuit in 1965 in *Britton v. Folsom*, 350 F.2d 1022 (1965) from which no appeal was taken. There may be skirmishes about other portions of what the District Court has now ordered, but the fundamental, and wide-

reaching decision this Court must make is whether federal court student assignment orders, made solely on the basis of, and solely to cure, ever-changing racial imbalances in various schools in a metropolitan school district, are constitutionally permissible, much less effective, as equitable remedies. Petitioners Curry, et al submit that now, 8 years after *Swann* during which Courts of Appeal have steadily but perfunctorily demanded the removal of "all vestiges" of student imbalance in city school systems by widespread busing, the answer is "no." This is so in the Dallas case because the findings by the District Court do not support any such remedy, *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 49 L.Ed.2d 599 (1976) ("*Pasadena*"); *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 53 L.Ed.2d 851 (1977) ("*Dayton*"), and because mandatory student assignment in metropolitan school districts to achieve racial balances, or remove "vestiges", is impractical and ineffective as an equitable remedy and destructive of the very objective it was designed to accomplish: meaningful integration of metropolitan school districts.

I. The District Court Had No Power To Order Further Student Assignment Plan To Cure Racial Imbalances

This present case was a new lawsuit filed on October 6, 1970, by Tasby et al as plaintiffs. As the Fifth Circuit described it, the complaint requested "desegregation of the DISD in accordance with post-1965 decisional law."

517 F.2d at 96. The DISD was, as noted, already operating under a racially-neutral neighborhood student assignment plan ordered by the Fifth Circuit in 1965. After the 1971 trial, the District Court found that "all vestiges" of a dual school system had not been "eliminated," but based that holding solely on racial imbalances in various public schools that the Court itself found did not result from any acts of the DISD. (See pp. 5-6 *supra*.) The Fifth Circuit, after curiously holding the case four years, struck down an innovative television plan adopted by the District Court, because the Circuit bench misinterpreted *Swann* to require "the elimination of predominantly one-race schools." 517 F.2d at 103. Even though the DISD *had never used buses* to transport any person except physically handicapped students, and even though there was no proof of any new constitutional violation — or the extent of it — the Fifth Circuit ordered development of a new student assignment plan (without guidance as to how or what) in 1975.

Following the District Court trial and findings recited above, the Fifth Circuit again — and in the face of *Pasadena* and this Court's instruction in *Austin II*, *Austin Independent School District v. United States*, 429 U.S. 990, 50 L.Ed.2d 603 (1976) — demanded a new assignment plan, citing its rhetoric about the constitutional requirement that one-race schools be eliminated and noting as an apparent reason for the reversal the insufficiency of evidence of any time-and-distance studies (as if *that* were a constitutional determinant).

A racially-neutral plan for assignment having been adopted in 1965 and not having been appealed, the District Court, in the absence of a finding of a new constitutional violation, had no authority to correct racial imbalances in the DISD schools by ordering busing. *Pasadena, supra*. As the Court said in *Pasadena*:

... there are limits beyond which a court may not go in seeking to dismantle a dual school system. These limits are in part tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation for 'absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis.' (49 L.Ed.2d at 607.)

Indeed the Court recognized in *Swann* that once a neutral plan had been approved, a district court had no basis for further intervention, by holding:

Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. . . . [In] the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demo-

graphic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.' 402 U.S., at 31-32, 28 L.Ed.2d at 575-576.

For this reason alone, there is no basis for a new student assignment plan to be ordered by a federal district court. See the Dissenting Opinion in *Hutch v. United States*, ___ U.S. ___, 58 L.Ed.2d 684 (1979). When as in Dallas, every child presently in the 12 grades in public school has been placed there under a racially-neutral assignment plan ordered by a federal court, there can be no "vestige" of a state-imposed dual school system. Certainly when there is no evidence or finding of any constitutional violation by the DISD after the 1965 decision and the undisturbed District court findings after two trials are to the contrary, there can be no basis or power for the lower federal courts to keep second-guessing themselves and repeatedly ordering a duly-elected public school board to "keep trying" with more student assignment plans. Under *Swann* and *Pasadena*, the plan adopted by the District Court should be vacated, and the case dismissed.

II. There Is No Basis In Fact Or Law For The Student Assignment (Busing) Orders Below

A. *The Orders For Busing Of The District Court And The Fifth Circuit Are Constitutionally Defective, Since There Was No Finding That Any Present Racial Imbalance Resulted From A Constitutional Violation*

By The DISD, To What Extent Any Such Violation Went, Or To What Extent Any Remedy Must Go Just To Cure Any Such Violation.

The U.S. District Courts in these cases are like U.S. District Courts in any other cases: They can only act on the basis of a constitutional or statutory violation. *Dayton*, 433 U.S. 410, 53 L.Ed.2d at 857; *Milliken v. Bradley*, 418 U.S. 717, 741-42, 41 L.Ed.2d 1069 (1974) ("*Milliken*"). Because of the vital role locally-elected and functioning school boards play in our nation's life, the power to displace that local board with supervening federal court orders in a school desegregation case can only be invoked after the case has been "satisfactorily established by factual proof and justified by a reasoned statement of legal principles." *Dayton*, 433 U.S. at 410, 53 L.Ed.2d at 857.

After thousands of pages of testimony in the 1971 and 1976 hearings in Dallas, there has been no proof or finding of a new constitutional violation by the DISD in this case. The most that the District Court ever found was that there were racial imbalances among the schools caused principally by demographic factors (but not by the DISD), and that the DISD had created some "discrimination" by not voluntarily desegregating faculty and other staff, adopting a majority to minority transfer program, adopting some policy in regard to school construction and site selection, and appointing a bi-racial committee pursuant to the Fifth Circuit's post-1965 decision in *Singleton v. Jackson Municipal Separate*

School District, 419 F.2d 1211 (1969). *Tasby*-1971, 342 F.Supp. at 948.

Curry et al have quoted at length the pertinent findings of the District Court in regard to "present" racial imbalances (which is, of course, a moving target due to neighborhood changes and the desire of the middle class to avoid busing). Not one of these rise to the level of a constitutional violation, and in fact the persistent themes in the 1971 and 1976 findings are (1) the DISD has tried hard and acted in good faith to give an equal educational opportunity to all students, and (2) "present" student body racial imbalances were caused entirely by demographic factors and orders of the courts themselves. The District Court and the Fifth Circuit have ordered more and more busing ("student assignment plans") solely because they mistakenly took one sentence in the *Swann* decision to require the immediate eradication of *all* racial imbalances in a school system.

If that narrow reading of *Swann* was excusable in 1975, it was totally inexcusable in 1978 — after this Court had written *Dayton*, which decision, if not already known, was called to the attention of the Fifth Circuit by Curry et al's "Supplemental Brief" on August 8, 1977. The Fifth Circuit in 1978 not only ignored the absence of any finding of a constitutional violation in this case, it didn't even acknowledge *Dayton* or *Austin II* in connection with the DISD portion of this case.

None of the three *Dayton*-required findings are anywhere in the record of this case nor is there

evidence to support any such findings. Indeed, as noted, the findings are directly to the contrary.

More specifically, there first and foremost is no finding that the alleged condition of racial imbalance "resulted from intentionally segregative actions on the part of the Board." *Dayton*, 433 U.S. at 433, 53 L.Ed.2d at 859. Instead, the unchallenged finding of the District Court in 1971 was that private housing patterns and no action of the DISD had caused the racial imbalance. This case is even devoid of the vague "cumulative violations" referred to in *Dayton*. The only specific findings of "discrimination" by the DISD consisted solely of its failure to adopt voluntarily (pursuant to post-1965 Fifth Circuit decisions) a majority to minority transfer policy and desegregation of its faculty, both of which actions were voluntarily taken prior to the end of the trial of this case in 1971. In any event, a "remedy" of busing is not even reasonably related to the cure required for such non-assignment non-acts. *Dayton*, 433 U.S. at 419, 53 L.Ed. at 863.

The second requirement of *Dayton* focuses on the results of the violation, if any. The trial court below and the Fifth Circuit did not even suggest that there was any incremental segregative effect on the racial distribution of the DISD school population as "presently" constituted, or even remotely suggest that the racial distribution of students is any different now than what it would have been in the absence of any such alleged "constitutional violation." Again, the District Court

findings are in fact to the contrary, that is that no act of the DISD caused the "present" racial imbalance in any of the schools.

The third *Dayton* requirement limits the fashioning of a remedy: "Once a constitutional violation is found a federal court is required to tailor 'the scope of the remedy' to fit 'the nature of the violation' ". 433 U.S. at 420, 53 L.Ed.2d at 863. "The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy." *Ibid*. Applying this rule to the present case the District Court in 1971 adequately corrected any alleged constitutional deficiency by requiring the adoption of a majority-minority transfer policy, and the desegregation of faculty (each of which were voluntarily done by the DISD). However, the District Court and the Fifth Circuit also failed to do just what the Court of Appeals failed to do in *Dayton*: "... [I]nstead of tailoring a remedy commensurate to the three specific violations, the Court of Appeals imposed a systemwide remedy going beyond their scope." 433 U.S. at 417, 53 L.Ed.2d at 862. The District Court called for busing 17,300 students in grades 4-8 all over the 351 square miles of the DISD, except in the East Oak Cliff section; the Fifth Circuit remanded for more — all without any showing of the extent of the unfound but alleged student assignment violation.

Dayton, of course merely expanded this Court's prior ruling in *Austin Independent School District v. United States*,

429 U.S. 990, 50 L.Ed.2d 603 (1976) ("Austin II"), in which this Court pointed out to the Fifth Circuit that *Washington v. Davis*, 426 U.S. 229, 48 L.Ed.2d 597 (1976) controlled. *Washington v. Davis* held that mere racial imbalance was not enough to find a constitutional violation and that the essential of any constitutional violation requiring action was a finding of a purpose of intent to segregate in connection with an intentional discriminatory act. The concurring opinion in *Austin II* predicted the principles of *Dayton* and expanded on what Chief Justice Burger had said in *Milliken v. Bradley*, 418 U.S. 717, 41 L.Ed.2d 1092 (1974), that the remedy [to correct a constitutional wrong] is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 50 L.Ed.2d 450 (1977), and *Board of School Comm'rs of the City of Indianapolis v. Buckley*, 429 U.S. 1068, 50 L.Ed.2d 786 (1977).

It is now apparent that the Fifth Circuit is continuing to refuse to follow *Dayton* and *Austin II*. As was pointed out in the dissent on December 5, 1978, in *Hutch v. U.S.; South Park Independent School District v. U.S.; and Board of Education for the City of Valdosta. Georgia v. U.S.*, ___ U.S. ___, 58 L.Ed.2d 684 (1978), this Court's rulings in school desegregation cases are being avoided by the Fifth Circuit by the simple expedient of continually sending cases back to the district court for additional remedial action — without pointing out

what action is to be taken or what constitutional violation requires it.

The Fifth Circuit in this case radically departed from the accepted and usual course of judicial proceedings and has required such a departure by a lower court. In the face of *Austin II*, the Fifth Circuit was requested by *Curry et al* to follow *Dayton*, and it didn't even cite it with respect to the DISD case. Then, after its opinion, the Fifth Circuit was requested by *Curry et al* in their Brief in Support of Rehearing en banc to follow Federal Rule Civ. Proc. 52(a) and to test the District Court findings by the "clearly erroneous" standard. Instead the Fifth Circuit ignored *all* District Court findings and remanded under the facade of *Swann* because there were not "adequate time-and-distance studies in the record." 572 F.2d at 1014. It is obvious that the Supreme Court must exercise its power of supervision. Rule 19-1(b), Rules of the Supreme Court. Since there are no *Dayton*-type findings that would authorize the exercise of federal court power to bus students, and since all findings are in fact to the contrary, the appropriate remedy is to reverse and render this case, returning the DISD to the authority of its School Board under the terms of the racially neutral plan adopted in 1965, with the already agreed to modifications by the School Board with respect to majority-minority transfers and faculty desegregation.

B. The "Remedy" Of Busing Adopted By The District Court And Ordered By The Fifth Circuit Is Inappropriate To Cure Even The Violations Alleged.

The District Court ordered imposition of a system-wide busing plan in 5 of 6 sub-districts of the DISD calling for 17,300 students in grades 4-8 to be moved just for the purpose of mixing ratios of black, brown and white bodies in the "middle" schools. It is improper — and actually a violation of the constitutional rights of others — to bus students just to attempt to eradicate predominantly white or predominantly black schools in the school system. *Dayton*, 433 U.S. at 417, 419-420, 53 L.Ed.2d at 861, 863-64.

As in *Dayton* and as in *Austin II*, "there is no evidence in the record available to us to suggest that, absent those constitutional violations [ed. note "if found"], the . . . school system would have been integrated to the extent contemplated by the plan." *Austin II*, 429 U.S. 990, 50 L.Ed.2d at 605 (concurring opinion). Since there have been two trials of this matter (1971 and 1976) and the explicit findings fail to support the plaintiffs' allegations, and indeed refute them, the District Court's student assignment plan is clearly unjustified under the principles of *Dayton*, *Austin II*, *Washington v. Davis*, and *Swann*.

The following facts and findings affirmatively preclude any busing order:

(1) Regarding the predominantly black South Oak Cliff sub-district, the District Court in 1971 found that in the Oak Cliff section of the District, the racial imbalance came from private housing patterns *after* 1965 (when the Fifth Circuit ordered a racially neutral plan) — and not from any DISD action. 342 F.Supp. 956. The Fifth Circuit never set those findings aside as "clearly erroneous" and hence they are binding today. Clearly no busing is justified in that area.

(2) The District Court in 1976 found that the South Oak Cliff area, "given the practicalities of time and distance, and the fact that the DISD is minority Anglo," must necessarily remain predominantly minority. The court also approved the conclusions of its appointed expert, Dr. Josiah Hall, that with few exceptions, that area's facilities were superior, the residential property located near each school was superior, and that educational opportunity in terms of facilities or programs would not be improved by complete redistribution of all pupils. 412 F.Supp. at 1204. The Fifth Circuit did not find that conclusion clearly erroneous.

(3) The trial court found many areas of the DISD that were *formerly* one race had become naturally integrated, namely Western Oak Cliff, Pleasant Grove, East Dallas, and the area of North Dallas included in the attend-

ance area for Thomas Jefferson High School. 412 F.Supp. at 1197. (These groups are in part before the Court as the Strom intervenors and the Brinegar intervenors.) The court found present student assignments should be maintained in those schools where integration had naturally occurred, because no "vestiges" remained. 412 F.Supp. at 1206. The Fifth Circuit did not hold those findings clearly erroneous.

(4) Curry et al provided testimony in 1971 that far North Dallas had been settled after Brown I. See 517 F.2d 108. There has never been any finding by any court that any action by the DISD had anything to do with the predominantly white residential settlement of that area, and hence the predominantly white schools that resulted from that settlement. Instead the District Court found in 1971:

The adoption of a plan of desegregation for a school system of the size and complexity of DISD has been commented upon briefly. *The problems resulted, of course, from private housing patterns that have come into existence and not from any action of the DISD.* 342 F.Supp. at 951 (Emphasis added.)

The Fifth Circuit never set that finding aside as clearly erroneous, and hence it is binding today.

The result is inescapable: On the basis of findings and conclusions of the District Court in 1971 and 1976, no one of which has been set aside under Rule 52(a), there is no legal or constitutional basis for ordering busing in the DISD in any area. *Dayton*. Plaintiffs and the N.A.A.C.P. have had their days in court, they have not proven their allegations, and the findings on the present cause of racial imbalance in the DISD schools are against them. It is time this case ended, and the inappropriate student assignment plans adopted by the District Court and ordered by the Fifth Circuit be set aside.

III. "Busing" As A Remedy Is Not Practical Or Effective; It Has Never Been Proven An Appropriate Alternative To The Neighborhood School.

The Courts have now gone full circle. In *Brown v. Board of Education*, 347 U.S. 483, 98 L.Ed. 873 (1954) this Court held that legislatures, no matter how well intentioned, could not require school attendance on the basis of race. Congress in the Equal Educational Opportunity Act (20 U.S.C. §§1701, 1705, and 1712) also prohibited imposition of busing as a so-called remedial action to attain racial balances in schools. Yet precisely on the basis of race (*sub nom.* "racial imbalance" or "vestiges") and on their own judgment of what is best, federal courts have ordered busing to balance races.

It is amazing that the courts ever got into the busing ("student assignment," "transportation," "removal of

vestiges") business. Perhaps it is conceptually understandable that where school districts had long used buses to segregate, as in a tiny district like New Kent County,¹ or even in a larger, semi-urban district like Charlotte-Mecklenburg,² the courts logically, without any study or evidence of the impact of what they were doing, reversed the process and mundanely ordered the buses to be used to desegregate. That, however, even in semantic logic, is a canyon apart from permitting circuit courts, for some eight years now, without evidence, proof, or concern about the factual, educational, or sociological impact of busing orders, to disrupt every conceivable neighborhood school attendance zone and their historic neighborhood sociological impact on the structure of each affected community, against the unproven hope of bringing about more "desegregation" by balancing racial mixtures in large, urban districts. See, e.g., *Morgan v. Kerrigan*, 530 F.2d 401 (1st Cir. 1976). *United States v. Texas Educ. Agency*, 532 F.2d 380 (5th Cir. 1976); *Northcross v. Board of Educ. of the Memphis City Schools*, 466 F.2d 890, 894 (6th Cir. 1972).

Will this Court not now examine, at long last, what its order in *Swann* unleashed in terms of the effectiveness of busing (even assuming the legality of the "remedy"), in terms of educational benefit, and in terms of community impact in a democracy? If it does,

¹ *Green v. County School Bd. of New Kent Co.*, 391 U.S. 430, 20 L.Ed.2d 716 (1968).

² *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 L.Ed.2d 554 (1971).

it will find that busing, certainly in urban districts, has met none of its supposed goals — and no plaintiff in any desegregation case has to Curry et al's knowledge ever proven or offered to prove that it does. (Certainly plaintiffs and the NAACP in this case offered no such proof.)

The supposed rationale for imposing the remedy of mandatory busing to cure some default on the part of a local school board, must be (1) the desegregation of the system, or perhaps (2) the improvement of the quality of educational experience, or perhaps (3) the lessening of racial hostility, or perhaps (4) the increase of self-esteem among minority students.³ There is no evidence, now eight years after *Swann*, that mandatory busing achieves any of the supposed goals. There is accordingly no justification for this Court to continue to hope, as it did in *Green* some 11 years ago, that busing "promises to work."

As a "remedy" to bring about desegregation (or racial balance in schools), mandatory busing has been a failure in large urban areas, especially those surrounded by predominantly white suburban school districts. Dr. David Armor, Senior Social Scientist at Rand Corporation,⁴ did a special study of 16 school districts with

³ See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28-32, 28 L.Ed.2d 554, 575-77 (1971); N. St. John, *School Desegregation—Outcomes for Children* (Wiley & Son, 1975); L. A. Graglia, *Disaster by Decree* 105-132 (1976).

⁴ Dr. Armor's resume is Curry Ex. 5.

similar characteristics to Dallas that were (1) predominantly white at the time desegregation efforts commenced by the federal courts through the use of mandatory busing (2) in a large urban area (containing more than 20,000 students) and (3) surrounded by predominantly white suburbs. (Tr. VII: 221-26, 234-35) Dr. Armor testified that in his opinion the advent of mandatory busing in these 16 school districts resulted in a rapid loss of white enrollment and resegregation of the schools, leaving minority students with no opportunity for an integrated education. (Tr. VII: 235-50; see Curry Ex. 6-9 for a tabulation of his findings (at Appendix pages 260-264).) Dr. Armor visited Dallas schools, reviewed the Dallas busing plans proposed by plaintiffs, by the NAACP, by the DISD, Dr. Hall, and by The Dallas Alliance, and testified that all would cause resegregation in Dallas because of busing (Tr. VII: 250-58). Although experts produced by plaintiffs chipped-away at Dr. Armor's methodology, and although the District Court failed to make findings requested by Curry et al reflecting Dr. Armor's conclusions, he is clearly right — and the courts are displaying an ostrich-syndrome by refusing to recognize the obvious: The American parent who can avoid busing will do so.⁵

⁵ See opening statements in *Calhoun v. Cook*, 522 F.2d 717 (5th Cir., 1975) (recognizing the same disastrous result from court-tampering with racial balances in Atlanta even prior to busing); testimony of James S. Coleman in this record at Tr. 307-08; L. A. Graglia, *Disaster by Decree*, (1976); District Judge Taylor's findings in *Tasby-1976*, 412 F.Supp. at 1205; Dr. Armor's "Rand Paper," published following his work and testimony in Dallas, *infra* n. 16; Dr. Nathan Glazer's testimony, Tr. VIII: 276-77; Dr. Nolan Estes' (DISD Superintendent) testimony, Tr. I: 339-43, 352.

Professor James S. Coleman, Distinguished Professor of Sociology at the University of Chicago and the father of the massive "Coleman Report" on segregation in American Schools which is the basis of all sociological surveys in the field of race and education, testified that in his opinion, after studying the larger cities in the United States, "extensive desegregation" "increases the loss of white-children from the district and as a consequence, it has the longer-term effect of re-establishing predominantly black schools in the central city."⁶ (Tr. VIII: 307-08) He testified that extensive desegregation in the DISD, based on his study and the effects of the 1971 order (*Tasby-1971*), would have the long-term effect of resegregating the races. (Tr. VIII: 309) In Professor Coleman's opinion "complete elimination of racial segregation through racial balance in a large city's schools is neither a desirable nor a feasible goal, any more than complete balance among ethnic groups in each school is desirable or feasible." (Tr. VIII: 326)

Curry et al also brought Dr. John Letson, former Superintendent of the Atlanta school system during the time of its trials with court-ordered desegregation. Dr. Letson testified that in cities like Atlanta, where the remedy was merely threatened, the impact was a dramatic loss of white students. (Tr. VIII: 5-8) Dr. Let-

⁶ For some reason Professor Coleman's testimony is not indexed at the beginning of the transcript, but it appears in Volume VIII at pages 305-331.

son said in his opinion the adoption of a mandatory student assignment plan would not have brought about a successful desegregation effort in Atlanta but would only have accelerated resegregation. (Tr. VIII: 12-13) He said every effort, no matter how sincere, to move white children in and toward the inner city failed, and that in his opinion, similar efforts, as depicted in the various Dallas plans, would fail. (Tr. VIII: 19-20) Testifying as a "pragmatic school administrator" who had spent "a long period of years in honestly and honorably trying to accomplish this goal [of desegregation]," he said that he thought only voluntary plans, neighborhood schools, majority-to-minority transfers, and voluntary magnet schools would work. (Tr. VIII: 21-23) He was keenly disappointed at the failure of desegregation efforts in Atlanta, and condemned to failure the concept of desegregation, if that meant non-voluntary racial balancing by busing or otherwise. (Tr. VIII: 46, 48-49).

Further testifying at the request of *Curry et al* was Dr. O. Z. Stevens, Jr., Director of Research and Planning for the Memphis City School System. (Tr. VIII: 53) Dr. Stevens, through an elaborate, quite-thorough series of charts and tables (Curry Ex. 10, 11, and 12) detailed the utter destruction of any possibility of an integrated student body in Memphis due to post-Swann busing orders. (Tr. VIII: 55-110) Memphis, following such orders, lost 38,000 white students over and above what the research department had projected would be lost due to normal attrition, birth rate declines, and the like.

(Tr. VIII: 72) He testified that busing was not successful in desegregation at any level of public schooling (1 thru 12) and he did not think it would be successful in Dallas. (Tr. VIII: 107-110)

From this evidence, Dallas' own experience, and current sociological and educational studies, it is apparent that busing exacerbates, and does not aid, urban district segregation. Dr. Stevens testified that the result of the Memphis desegregation plan had been to create "the largest segregated school system in the South . . . called the Memphis Private and Parochial School System," consisting of 36,000 white and 1,000 black students. (Tr. VIII: 107)

The testimonies of Drs. Letson and Stevens detail the racial destruction of two fine school systems, and the obvious good faith attempts — and resulting agonies — of two dedicated school administrators who tried to prevent those results. Dr. William Webster, head of Research Evaluation and Information Systems at the DISD, and Dr. Nolan Estes, a distinguished educator and superintendent of DISD, agreed with the futility of busing to desegregate. Each of them cited the numerous studies which have been made in the field, all supporting the fact that as a remedy, court-ordered busing simply does not effectively achieve desegregation. (Webster, Tr. VIII: 160-61, 169-172; Estes, Tr. I: 336-37, VI: 337-353).

Mandatory busing also is a failure in terms of upgrading minority academic achievement, another supposed purpose of busing. The evidence is overwhelming that mandatory busing achieves no positive results in academic achievement. Nancy H. St. John, in her acclaimed book *School Desegregation—Outcomes for Children*, reviews one hundred and twenty studies and concluded no pattern of positive results emerged. Witnesses Armor, Webster, and Glazer agreed.⁷ Even rebuttal witnesses agreed St. John's work was the latest and most thorough available. Dr. Lawrence Felice ran a specific study in Waco, Texas, on educational achievement and found that bused minority students significantly achieved less well.⁸ The testimony of Dr. Armor, Dr. Estes, Dr. Coleman, and Dr. Nathan Glazer⁹ distinguished Professor of Sociology and Education at Harvard University and co-editor of *Public Interest*, a widely-respected, scholarly national quarterly, is uniformly to the effect that *all studies demonstrate no positive results as a result of mandatory busing*.

Drs. Armor and Felice further testified that studies indicate either no improvement or in an increase in racial hostility and a lowering of minority student self-

⁷ Tr. VII: 261-64 (Armor); Tr. VIII: 170-71 (Webster); Tr. VIII: 271-73 (Glazer).

⁸ The study is Curry Ex. 18.

⁹ Tr. VII: 261-68 (Armor); Tr. I: 336-37 (Estes); Tr. VIII: 314-18 (Coleman), and Tr. VIII: 271-73 (Glazer).

esteem in those areas where mandatory busing was required by the United States courts.¹⁰

In summary, Curry et al brought to the trial substantial evidence that mandatory busing — in Dallas and across the nation — is not effective or practical to desegregate, to enhance racial relations, or to increase academic achievement for any race. The evidence now shows, and the nation's most distinguished scholars and sociologists agree, that actually, and particularly in large urban districts, notably Dallas and Memphis, busing to achieve racial balance, or the threat of it, causes massive losses of white students from the public school system — thereby causing resegregation, the recreation of minority isolated schools,¹¹ and the busing of minority students to predominantly minority schools. Petitioners Curry et al urge the Court to read in full the testimony of their witnesses, since their detailed charts, graphs, etc., obviously cannot be restated here. This evidence fully supported the trial court's decision not to bus grades K-3 and 9-12 (except by choice), but shows the order to bus grades 4-8 to be without support, unrealistic, ineffective, inequitable and totally inappropriate.

In Dallas the transition from a 69% Anglo school system to one in which Anglos constitute less than 35%

¹⁰ Tr. VII: 269-74 (Armor); Tr. VIII: 215-19 (Felice).

¹¹ As defined in 20 U.S.C. §1619(10) (the Civil Rights Act of 1964, as amended 1972).

of the scholastic population with the loss of in excess of 50,000 students is a dramatic disaster. This is in a city that is not suffering from urban blight or stagnant economic decay but is experiencing vibrant growth in all areas, except its central public school system.

Against this background of failure as a desegregation tool, failure as an educational tool, failure as a tool to achieve racial harmony, and failure as a tool to increase the self-esteem of minority students — all of which is *in the record* perhaps for the first time this complete since the advent of post-*Swann* busing — the blind persistence of federal courts in ordering busing as a “remedy” defies human understanding (witness the large exodus of persons from the public school systems).

The Dallas experience in and of itself demonstrates the disaster to true desegregation caused by busing. It was indeed busing itself which created the predominantly black school at Carter High School, partially relieved by now reversing the student assignments, and which is now the subject of appeal by some of the parties to this action. As the District Court noted, it ordered 1,000 white students bused in 1971, of whom only 50 appeared to stay in the DISD. (412 F.Supp. at 1205).

The approach used by the federal courts after busing has been one of non-evidentiary hear-no-evil, see-no-evil. Since *Swann*, circuit courts have simply seized on

busing as a given remedy, have required no proof that it would accomplish any result, and have consistently either denied advocates of neighborhood schools the right to show its inappropriate or harmful effects¹² or have sanguinely brushed off the proof by refusing to enter the “battle of the sociological experts”¹³ or have pontifically disdained findings that “. . . an order . . . will probably result in an all-black student body, where nothing in the way of desegregation is accomplished and where neither the white students nor black students are benefited.”

This Court in *Swann* started the large-scale busing business¹⁵ merely by holding that it could be used as a “tool” to desegregate. It did so albeit there was *no proof in the record* of its effectiveness or its educational or sociological impact. However, the Court went to great lengths to re-emphasize its previously established requirements for any such equitable “remedy”: (1) The remedy must promise to work and (2) it must be “judged by its effectiveness.” (citing *Green, supra*, in both instances), *Swann, supra*, 402 U.S. at 20, 25; 28 L.Ed.2d at 569, 572. The Court in 1968 had in fact rejected a “free transfer” desegregation plan, because it felt the plan was not realistic since “it patently operates as a device

12 *Morgan v. Kerrigan*, 530 F.2d 401, 419-22 (1st Cir. 1976).

13 *Tasby*-1976, 412 F.Supp. n. 50 at 1205.

14 *Lee v. Macon County Board of Education*, 465 F.2d 369, 370 (5th Cir. 1972).

15 It has undoubtedly produced “wind-fall profits” to bus makers and gasoline suppliers. See DISD Ex. 21 for the \$11,600,000+ projected cost of implementing the NAACP’s plan to bus 40,000 students.

to allow *resegregation* of the races. . . ." *Monroe v. Board of Comm'r of the City of Jackson*, 391 U.S. 450, 459, 20 L.Ed.2d 733, 739 (1968). Curiously, the Court has not yet applied the "resegregation" test to busing, for if it did, busing as a remedy would be immediately rejected.

If the Court is consistent, and if it views urban-district busing against the time-honored equitable concepts of mercy, practicality, effectiveness, promise of reality, and the necessary balancing of the effects of busing on any of the segments of society it touches, *e.g.*, the neighborhood schools, as they exist, the city politic, the parents and their children who (a) are non-agreeable busing subjects or (b) are agreeable busing subjects, and the school district itself, it will find, certainly in this record, no evidence or promise of success. Although it was not their burden, and although the District Court did not make their requested findings, Curry et al's evidence in this record, from distinguished educators and sociologists around the country and from Dallas' own sad experience, shows that busing is inequitable — a failure.¹⁶ There was no

¹⁶ Current sociological and educational literature supports Curry's positions. This was the testimony of Dr. Nathan Glazer, distinguished Professor of Education and Sociology of Harvard University, in this case. Tr. VIII: 271-73, 289. See also D. Armor, *White Flight, Demographic Transition, and The Future of School Desegregation*, Rand Paper No. P-5931 (Aug. 1978) (delivered to American Sociological Ass'n, San Francisco, September 1978); L. A. Graglia, *Disaster by Decree* (1978); *Beyond Busing—Some Constructive Alternatives*, (various monographs) (Amer. Educ. Legal Defense Fund, 1976); N. St. John, *School Desegregation—Outcomes for Children* (1975).

evidence — and no finding — to the contrary, to justify the busing ordered by the District Court.

This Court must face the harsh reality that if indeed public school systems of the United States are to be preserved federal courts must reverse the *resegregated* urban school districts they have created.

Dr. Nolan Estes testified neighborhood schools have been effective educational tools.¹⁷ But more important in a period where the central cities are desperately fighting for survival and renewal, neighborhoods and a sense of neighborhood are essential to rejuvenation. The central focus of any neighborhood is its school, as it is only there where significant numbers of parents meet and work to preserve a vital ingredient of our republic.

Perhaps the real issue before the Court is whether school districts may adopt a racially neutral neighborhood school pattern of student assignment, with the escape hatch of majority to minority transfer options and magnet schools; or whether the neighborhood school concept, even with the escapes and safeguards of majority-minority transfers and

¹⁷ Tr. I: 344-45. The testimony was:

Q (Mr. Blumenthal): All right. And I believe you further testified that finally our evidence indicates that students can learn and probably learn better regardless of race in neighborhood type schools?

A (Dr. Estes): We can document that with our extensive and elaborate systematic research and development program.

magnet schools, is unconstitutional because of the familiar housing patterns of American cities. Not only have school boards and citizens throughout the United States historically considered neighborhood schools important, but Congress in the Equal Educational Opportunity Act itself expressed a national view that such arrangement of student assignment is important. The fact that this nation has historically organized itself into ethnic neighborhoods is a familiar pattern. No one suggests that the "Jewish" schools of the lower east side of New York, the "Irish" schools of south Boston, the "Italian" schools in east Boston, and "Polish" schools in south Chicago are "inferior" because of their ethnicity or "segregated" because of their neighborhood concept. If the Court determines that black neighborhood schools are unconstitutional as the Fifth Circuit continually does under the indicting jargon of "one race schools," surely it should also determine that all other ethnic neighborhood schools are "one race" and unconstitutional.

The sole basis for the "desegregation" cases is that black schools were once mandated by state statute in some states prior to 1954. A generation has passed since that time, and measured in terms of a school system, two generations of 12-year students have come and gone. The Constitution has limits on "corruption of blood" even for those convicted of treason. Article III, Section 3; Bills of Attainder are prohibited both to Congress, Article I, Section 9, and the States, Article I, Section 10. Surely the Courts are similarly limited in the tainting of generations, of public school students.

How many future generations are to be deprived of the privilege of going to a neighborhood school and of equal protection of the laws because their state legislatures once imposed a legal requirement of segregation upon their ancestors' school systems? Petitioners cannot be more eloquent than was Mr. Justice Powell in his defense of the neighborhood school system and the need for parents' concern and nurturing protection of their children expressed in the concurring opinion in *Keyes v. School District No. 1*, 413 U.S. 189, 245-251, 37 L.Ed.2d 548, 584-587 (1973). Justice Powell there also foresaw the divisive spector looming behind the issue of busing:

Finally, courts in requiring so far-reaching a remedy as student transportation solely to maximize integration, risk setting in motion unpredictable and unmanageable social consequences. No one can estimate the extent to which dismantling neighborhood education will hasten an exodus to private schools, leaving public school systems the preserve of the disadvantaged of both races, or guess how much impetus such dismantlement gives the movement from inner city to suburb, and the further geographical separation of the races. Nor do we know to what degree this remedy may cause deterioration of community and parental support of public schools, or divert attention from the paramount goal of quality in education to a perennially divisive

debate over who is to be transported where.
(413 U.S. at 250, 37 L.Ed.2d at 587)

The answer to the question is in. All of the "unpredictable and unmanageable social consequences" are now predictable and at *least* as destructive as feared. No Court has ever seen nor required evidence to show that the remedy of busing will in fact desegregate, and will not in fact resegregate and destroy familiar neighborhood ties — if not the ties that once brought young, middle class Americans to our cities. The *best* that can be said for all the sociological and educational evidence ever advanced in support of busing is that it is inconclusive and by no means supports such a conscriptive, disruptive interference of federal courts into the private lives of millions of Americans.

The truth is, however, the busing diehards, and the Courts, simply will not open their eyes to the obvious. Mandatory busing to achieve "desegregation" is a failure, since it resegregates, it advances or promotes no significant social or educational goal, and it has run thousands of middle-class Americans out of the public school system and into private schools or suburbs. From leading intellectuals,¹⁸ pragmatic secondary school educators,¹⁹ and social scientists-educators,²⁰

¹⁸ Nathan Glazer, Tr. VIII: 271-273.

¹⁹ John Letson (Atlanta), Tr. VIII: 5-20, 46-49; O. Z. Stevens (Memphis), Tr. VIII: 55-110; Nolan Estes (Dallas), Tr. I: 336-44.

²⁰ David Armor (Rand Corporation), Tr. VII: 221-58; James S. Coleman (University of Chicago), Tr. VIII: 307-26; Lawrence Felice (Baylor University), Tr. VIII: 207-21.

the Court is being told its "tool" of equity is a bitter failure.

Probably Dr. Felice's surprise at the negative results of his study in Waco and his warning to minority families best capsulizes the busing dilemma:

First of all I was surprised by this. I didn't expect to find it and I don't think I really wanted to find it. (Tr. VIII: 219)

It seems to me I would really be fearful of using mandatory busing in a community where there wasn't a majority of the white community and black community in favor of it. It seems to me if the community, if everyone was in favor of it it would work. But on the other hand what I tend to conclude from the data that I have is that people were not in favor of this in Waco and it created problems. And . . . well I guess a part of my being here or a part of the reason I am here too is to try and just to publish the results of this study and even to suggest to minority families that the results may not be necessarily beneficial. (Tr. VIII: 220-21)

The attitude — and lack of success — in Waco is no different than in Atlanta, Boston, Dallas, Detroit, and the other major cities where the "promise" or "hope" of busing working and working *now*, has been dashed.

If this Court desires to create a system of private schools for the affluent, the rich and the suburban, and leave inner city schools predominantly minority and poor, it is free to do so. But this Court should be mindful of what it is doing and why. Public School has been the common experience of most all Americans. It has been a social leveler, and the escape hatch for the upwardly mobile. When each student has an opportunity to go to any school in which he is in a minority by race and there are non-discriminatory neighborhood assignments otherwise, there is available all of the constitutional requirements for an equal education opportunity school system. That is all the Constitution requires. Busing takes the Court and the notion of equal educational opportunity into another realm — one not contemplated by the U.S. Constitution.

CONCLUSION

In 1965 the Fifth Circuit Court of Appeals mandated a racially neutral neighborhood school student assignment plan for the DISD. The district operated under this plan for five years in accordance with the mandates of the court; the courts now have no standing to revise that plan to remedy racial imbalances that were not caused by any intentional segregative act of the DISD. Further, there is no showing of any intentional segregative action by the DISD which caused the racial imbalances sought to be remedied. Finally, there has never been a finding that the student assignment plan in Dallas or similar plans anywhere in fact

"desegregate" and the overwhelming evidence is that such plans resegregate the districts in which they were adopted, without any benefits. The hour is late for the Dallas Independent School District and for public school systems across the nation. The Court has unleashed forces which are changing the very nature of central cities of America, effectively removing the middle class from such cities and their school systems. In eight short years the Dallas Independent School District has gone from 69% Anglo to less than 35% Anglo. This is a demographic shift of colossal proportions.

Neighborhoods and cities cannot survive without the amenity of a viable and supported public school system. A racially neutral neighborhood school system does not violate the Constitution of the United States. This is especially true when the additional safeguard of a majority-to-minority transfer policy is assured, so that every student may attend, if the student chooses, any school in which his race is a minority. This Court should finally address the issue of racially neutral neighborhood schools, unclothed by the rhetoric of "vestiges" and unprejudiced by a belief that a school district is "segregating" because free people voluntarily select housing and the neighborhood in which they choose to live.

Respectfully submitted,

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We, Robert L. Blumenthal and Robert H. Mow, Jr., attorneys for Petitioners Curry et al. herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of May, 1979, we served three copies of the foregoing Brief upon the following Counsel for Respondents, Counsel for other Petitioners, Counsel for Amicus Curiae, and the Respondent Pro Se:

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-283

RALPH F. BRINEGAR, ET AL.,

Petitioners,

v.

METROPOLITAN BRANCHES OF THE DALLAS N.A.A.C.P., ET AL.,

Respondents.

No. 78-253

NOLAN ESTES, ET AL.,

Petitioners,

v.

DALLAS N.A.A.C.P., ET AL.,

Respondents.

No. 78-282

DONALD E. CURRY, ET AL.,

Petitioners,

v.

DALLAS N.A.A.C.P., ET AL.,

Respondents.

(CONSOLIDATED)

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE PETITIONERS, RALPH F. BRINEGAR, ET AL.

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TO THE HONORABLE COURT:

BRIEF FOR PETITIONERS RALPH F. BRINEGAR, ET AL

OPINION BELOW

The opinions, orders and judgment of the District Court
are reported in part at 412 F.Supp. 1192 and are more

fully set out in the Petition of Nolan Estes, et al, Petitioners ("Petitioners Estes") (Estes Pet., App. "B", 4a-129a). The opinion of the Court of Appeals (Estes Pet., App. "C", 130a-146a) is reported at 572 F.2d 1010. Additional references to petitions for rehearing and motions for stay of mandate are as set forth in the Estes Petition (Estes Pet., 2).

JURISDICTION

As stated in the Estes Petition, the judgment of the Court of Appeals was entered on April 21, 1978, with a timely Petition for Rehearing being denied on May 22, 1978. The Estes Petition was filed August 14, 1978, the Petition of Ralph F. Brinegar, et al, Petitioners for whom this brief is filed, ("Petitioners Brinegar") was filed August 19, 1978, as was the petition of Petitioners Donald E. Curry, et al ("Petitioners Curry"), all of which were consolidated and granted on February 21, 1979. This court's jurisdiction is invoked under the provisions of 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the formulation of a desegregation plan to eliminate unconstitutional vestiges of a dual school system is required under the Equal Protection Clause where the only fact finding supporting the existence of unconstitutional vestiges of a dual system was the existence of one-race schools.

2. Whether the continuation, encouragement and preservation of naturally integrated schools should be a guiding principle in the formulation of a desegregation plan as compared with the principle of eliminating all one-race schools.

3. Whether a desegregation plan's effect upon efforts of urban renewal and rehabilitation of inner-city neighborhoods, particularly those which are naturally integrated or are tending towards predominantly minority population, should be a factor in fashioning the constitutional remedies for removal of vestiges of a dual school system.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

"... nor shall any state ... deny to any person within its jurisdiction equal protection of the laws."

Certain statutes of the United States hereafter quoted in pertinent part, may also apply:

"The failure of an educational agency to attain a balance on the basis of race, color, sex or national origin of students among its schools shall not constitute a denial of equal educational opportunity or equal protection of the laws." (20 U.S.C. § 1701).

"In formulating a remedy for denial of equal educational opportunity or denial of equal protection of the laws, a court, department or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of laws." (20 U.S.C. § 1712)

STATEMENT OF THE CASE

1. Brinegar Petitioners.

Petitioners Brinegar are a group of persons (listed in Estes Pet. App. "A", 3a-4a) who the District Court per-

mitted on September 17, 1975, to intervene. They represent a class of persons living in the naturally integrated area of East Dallas (Estes Pet. App. "B", 6a). East Dallas for this purpose generally includes the traditional J. L. Long Junior High School zone and certain adjacent areas (Brinegar Ex. 1 and 2, R. Vol. VIII, 335, 337, 342). The class representatives include three Blacks, four Mexican-Americans and ten Anglos.

2. History of Litigation.

Petitioners Brinegar have reviewed and agree with the Statement of the Case in the Petitioners Estes' brief for the Dallas Independent School District (hereafter called the "DISD").¹ However, further amplification is necessary to understand the questions presented by Petitioners Brinegar.

As more fully explained in the DISD brief, this case is part of a continuing series of suits involving the DISD going back to 1955 immediately following *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (*Brown I*).

In 1965, after years of transitional plans, pursuant to the order of the Court of Appeals, all students in the DISD were assigned to the schools in the zones in which they resided, without regard to their race. *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965).

¹DISD is the eighth largest school district in the U. S. and covers 351 square miles (Estes Pet. App. "B", 14a). It includes substantial portions of the City of Dallas as well as Kleberg and Seagoville to the southeast. At March 1, 1979, according to the DISD report to the District Court dated April 15, 1979 ("DISD 1979 Report", Vol. 1, App. "A", 304), there were 133,648 students in the DISD.

In 1970, subsequent to this Court's decision in *Green v. County School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed 2d 716 (1968), the current case was filed by new plaintiffs, and was decided by the district court subsequent to this Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed. 2d 544 (1971) (*Swann*).

3. Findings of Vestiges Because of Predominantly Minority One-Race Schools.

The District Court in its Memorandum Opinion filed July 16, 1971 (Brinegar Pet. App. "A", A-1 - A-6; also 342 F.Supp. 945 (N.D. Tex. 1971)) made the *only* findings of fact to date in this case regarding the *existence* of vestiges of an unconstitutional state-imposed dual system in the DISD as follows:

"When it appears as it clearly does from the evidence in this case that in the [DISD] 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the [DISD], and I find and hold that elements of a dual system still remain.

"The School Board has asserted that some of the all black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools..." (Brinegar Pet. App. "A" A-2-A-3)

In the July 16, 1971 Memorandum Opinion, the District Court specifically found that the plaintiffs did not sustain

the burden of showing that there was some form of *de jure* segregation against Mexican-Americans as an ethnic minority, though the District Court did say that Mexican-Americans would be taken into consideration in the formulation of a plan or remedy as a separate and clearly identifiable ethnic group. (Brinegar Pet. App. "A", A-3-A-4)

4. Original Plan Adopted by District Court in 1971.

As a result of a series of orders, the Plan adopted by the District Court in July and August of 1971 provided among other things for the satelliting of some secondary students, and for a "television plan" for inter-classroom participation in the elementary grades utilizing television and occasional transfers by bus. The District Court also ordered the desegregation of faculty and staff according to the formula mandated in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211, 1217-18 (5th Cir. 1979) (*Singleton*), the so-called Singleton ratio, but providing for a 10% variance in each school, a majority to minority transfer program for secondary students, appointment of a tri-ethnic committee, development of a site selection and school construction policy and regular desegregation reports to the District Court. **At the request of the plaintiffs**, the Court of Appeals immediately stayed the implementation of the television plan.

5. 1975 Remand by Court of Appeals for More Desegregation.

Appeals were taken by various parties to the Court of Appeals. Approximately four years later, apparently having delayed their decision awaiting this Court's decision in *School Board of City of Richmond v. State Board of Education*, 412 U.S. 92, 93 S.Ct. 1952, 36 L.Ed. 771 (1973), and

Milliken v. Bradley, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974) (*Milliken*), the Court of Appeals reversed and remanded the case to the District Court. *Tasby v. Estes*, 517 F.2d 92, 108, 110 (5th Cir. 1975), cert. denied 423 U.S. 939. Among the many issues considered by the Court of Appeals was the 1971 student assignment plan (517 F.2d at 104), faculty and staff desegregation (517 F.2d at 107), certain school site and construction controversies (517 F.2d at 104-106), and the contention by a group of intervenors that a number of adjacent school districts be consolidated with the DISD for purposes of a desegregation plan. 517 F.2d at 108-109. The Court of Appeals affirmed the District Court's decision to treat Mexican-American students as a distinct minority group for the purpose of school desegregation. 517 F.2d at 106-107.

6. Development of Current Desegregation Plan.

The District Court immediately began the necessary actions for formulating a school desegregation plan which culminated in a trial of over a month.² The District Court filed its first Opinion and Order on March 10, 1976 with supplemental orders later completing the plan outlined in the first Opinion and Order. (Estes Pet. App. "B", 4a-129a) Also at 412 F.Supp. 1192. All the plans considered by the District Court and how the District Court arrived at the Plan it ordered are discussed in the District Court's March 10, 1976 Opinion. (Estes Pet. App. "B", 7a-32a) However, it would be fair to say that the Plan

²The Court had previously conducted a trial of the issues of whether the Highland Park School District should be consolidated and found against including the Highland Park School District. *Tasby v. Estes*, 412 F.Supp. 1185 (N.D. Tex. 1975), affirmed by the Court of Appeals in the Opinion below, but not among the issues presented to this Court. 572 F.2d at 1015-1016.

developed was the result of a tremendous community effort initiated by the District Court's concern that the Plan, in addition to establishing a unitary, non-racial system of public education in the DISD, would provide quality education for all students. (Estes Pet. App. "B", 6a-7a, 13a, 52a; R. Sept. 16, 1975, Hearing in District Court, 83-91; R. December 18, 1975 Hearing in District Court, 14.) As stated in its March 10, 1976 Opinion and Order, the District Court challenged the business leaders of Dallas and received offers of assistance from churches and other civic organizations.

The Dallas Alliance³ itself an organization of many if not most of the business and civic organizations of Dallas and many church organizations (Dallas Alliance Amicus Curiae Brief to Ct. of App., App. "B", B-1), sponsored a group called the Educational Task Force of the Dallas Alliance made up of seven Anglos, seven Mexican-Americans, six Blacks and one American Indian, which included a mix of lawyers, blue collar workers, civic leaders, clergymen, housewives, governmental professionals and educators. (R. Vol. V, 7, 117-118; Ct.'s Ex. 1, R. Vol. V, 8, 20) It had a paid staff and executive director who is a well regarded educator, Dr. Paul Geisel. (Estes Pet. App. "B", 6a, R. Vol. V, 4-6) The basic concepts of the Plan developed by the Dallas Alliance Task Force, after months of weekly meetings and studies, were adopted by the Court as its Plan. (Estes Pet. App. "B", 26a-35a, 37a-40a, 47a-49a)

The Plan was characterized by the Dallas Alliance in their brief as Amicus Curiae to the Court of Appeals as

³24 members of the Dallas Alliance's 40 member Board of Directors represent racial and other groups according to their proportion of the Dallas population. The rest represented various governmental entities. (R. Vol. V, 51-52)

a careful balancing of many varied desegregation remedies and as a sophisticated interplay and working out of the problems and desires of Anglos, Mexican-Americans and Blacks in the DISD. (Dallas Alliance Amicus Curiae Brief to Ct. of App. 5, 18-19; R. Vol. V, 24, 102, 361-374) As a result of the work of the District Court and the Dallas Alliance, the major Black, Anglo and Mexican-American organizations in Dallas endorsed the District Court's Plan, with the exception of the N.A.A.C.P. branches who are respondents in this case before this Court. (Dallas Alliance Amicus Curiae Brief to Ct. of App., 23)

The Plan reorganized the DISD into six subdistricts, the Northwest, Northeast, East Oak Cliff, Southeast, Southwest and Seagoville. (Estes Pet. App. "B", 53a-56a) Except for the Seagoville Subdistrict, which extends to the southeastern fringe of the DISD, its north borders being the Southeast Subdistrict, the subdistricts radiate roughly from the central business district of the City of Dallas and form wedges extending out to the DISD boundaries except for the Southeast Subdistrict, which extends out to the northern border of the Seagoville Subdistrict. (For reference a map of the DISD showing the Subdistrict's boundaries as established in the District Court's Final Order as supplemented (Estes Pet. App. "B", 53a-56a, 121a-122a) which was published in the Dallas Times Herald, August 15, 1976, Sec. B, 7 is attached as Appendix "A" to this brief).

The Southeast Subdistrict includes within its boundaries Pleasant Grove. The Southwest Subdistrict includes and is made up of Western Oak Cliff. Both the Pleasant Grove and Western Oak Cliff areas were found by the District Court to have achieved integration of school population through natural housing patterns. (Estes Pet. App. "B",

36a) Thus, the East Oak Cliff Subdistrict which had a predominantly minority student population was located between subdistricts found to be naturally integrated. (Estes Pet. App. "B", 31a)

The areas of the Northeast and Northwest Subdistricts immediately to the north, west and east of the central business district are generally minority occupied. (Compare D. Ex. 2, R. Vol. I, 77, 85 and D. Ex. 3, R. Vol. I, 81, 85, with Appendix "A" to this brief)

Moving out into the Northeast and Northwest Subdistricts, but adjacent to predominantly minority areas, are areas found by the District Court to be integrated through natural housing patterns. These include in the Northwest Subdistrict, the area of the attendance zone for Thomas Jefferson High School, and in the Northeast Subdistrict, the naturally integrated area of East Dallas, which approximates the J. L. Long Junior High School zone. (Hall's Ex. 3 and 4, R. Vol. 123, 128; Estes Pet. App. "B", 14a-15a) Substantial parts of the remaining areas of those subdistricts were considered majority Anglo at the time of the District Court's order. (Compare Appendix "A" to this brief and D. Ex. 2, R. Vol. I, 77, 85).

The Seagoville Subdistrict then had a higher Anglo population than the District as a whole, though the Court projected that Seagoville schools would have minority populations ranging from 13.7% to 30.4%. (Estes Pet. App. "B", 44a)

The Plan provided that grade configurations were standardized throughout the DISD as K-3 Early Childhood Education Centers, grade 4-6 Intermediate Schools, grade

7-8 Middle Schools and grade 9-12 High Schools. (Estes Pet. "B", 56a).

The ethnicity of the school populations of the subdistricts, other than East Oak Cliff and Seagoville, was to be the same as the DISD as a whole, plus or minus 5%. (Estes Pet., App. "B", 26a) Except for students attending many of the schools located in naturally integrated areas, the students in grades 4-8 were assigned to schools in an effort to provide an ethnic and racial mix approximating that of the subdistrict in which they resided, plus or minus 10%. (Estes Pet. "B", 27a) In the Northeast and Northwest Subdistricts this required extensive transportation of both minority and Anglo students. (Estes Pet. "B", 121a) The grade 4-6 Intermediate Schools and grade 7-8 Middle Schools in those subdistricts were to be located in the centralities to minimize time and distance of transportation. (Estes Pet. App. "B", 33a, 57a).

The Plan also provided for majority to minority transfers (Estes Pet. App. "B", 39a-40a, 68a-71a), continuation of the court appointed tri-ethnic committee (Estes Pet. App. "B", 38a-39a), annual audits by an independent agency (Estes Pet. App. "B", 36a-38a, 78a-81a), personnel allocations (Estes Pet. App. "B", 39a, 76a-78a), continued supervision of school construction (Estes Pet. App. "B", 75a), and site acquisition, continuation and establishment of magnet schools (Estes Pet. App. "B", 33a-35a), special provisions giving priority to locating magnet schools in the East Oak Cliff Subdistrict (Estes Pet. App. "B", 33a, 58a, 61a-62a), and special exemplary development and demonstration classes in the East Oak Cliff Subdistrict. (Estes Pet. App. "B", 59a-60a) The District Court retained jurisdiction. (Estes Pet. App. "B", 33a)

7. Finding That Vestiges of Dual System Do Not Exist in Naturally Integrated Areas.

The District Court made no findings in its 1976 hearings on formulation of a desegregation plan as to the *existence* of vestiges of the dual system other than to point to predominantly minority schools continuing to exist but it did make findings as to the *non existence* of such vestiges in naturally integrated areas:

"Although the DISD in 1975-76 cannot be considered to be wholly free of the vestiges of a dual system, significant strides in desegregation have been made since the [District] Court's 1971 order as a result of natural changes in residential patterns in the past three years. In the 1970-71 school year, 91.7% of all black students in the DISD attended predominantly minority schools, whereas in the 1975-76 school year, the percentages dropped to 67.6%. Testimony during the hearings showed that large areas of Dallas which formerly reflected segregated housing patterns are now integrated, namely Western Oak Cliff, Pleasant Grove, East Dallas, the area of North Dallas included in the attendance zone for Thomas Jefferson High School." (Estes Pet. App. "B", 14a-15a)

"E. The Concept of Naturally Integrated Areas

"As mentioned above, there is a substantial number of schools in the DISD in which the racial makeup of the student population reflects naturally integrated housing patterns. Two groups of intervenors represent parents and students living in several of these residentially integrated areas — namely the Strom intervenors, representing Western Oak Cliff and Pleasant Grove, and the Brinegar intervenors, representing East Dallas. These intervenors maintain that where integration in schools has been achieved through natural housing patterns, the present student assignments

should be retained, *since no vestiges of a dual system remain in these areas. The [District] Court is in agreement with this concept.* There is no denial of the right of educational opportunity in these areas, and, as all parties recognized, there would be no benefit, educational or otherwise, in disturbing this trend toward residential integration."

(Estes Pet. App. "B", 36a) (emphasis ours)

8. Trends in the DISD Toward Integration Through Normal Housing Patterns.

The Court had ample evidence of trends in the DISD toward natural integration of school populations, though some might argue that the trend is toward a predominantly minority school population in the DISD as a whole. The DISD in 1970 had a 69% Anglo student population. The DISD in 1975 had a student population of Anglo 41.1%, Black 44.5% and Mexican-American 13.4%. (Estes Pet. App. "B", 14a) The DISD on March 1, 1979, reported to the District Court (the DISD 1979 Rept. Vol. 1, App. "A", 301) student populations of Anglo 33.5%, Black 49.11%, and Mexican-American 16.37%. While the ethnic balance of the DISD student population for the K-3 grade levels is not broken out in separate totals in the DISD April 1979 Report, the projections of future DISD school population indicates that the mix of current K-3 levels may be lower than the DISD as a whole. (R. Vol. I, 67-68)

The District Court also had evidence that many of the older areas of the DISD in particular were becoming through housing patterns either naturally integrated or predominantly minority. The Court attached as Appendix B to its March 10, 1976 Opinion and Order charts showing the changes in the ethnic composition between 1970 and

1976 of most of the junior and senior high schools in the DISD. (Estes Pet. App. "B", 43a-44a)

That the DISD is trending towards integration of a substantial part of its student population through residential housing patterns is indicated in the DISD April 1979 Report. Under the District Court's Plan the only schools having populations based almost exclusively on the residential areas in which they are located are the grade K-3 Early Childhood Education Centers because there is no assignment and transportation of students from other areas.⁴ While majority to minority transfers are permitted in the K-3 centers (Estes Pet. App. "B", 68a-69a), it is believed that few students compared with the total K-3 population have done so. (The DISD April 1979 Rept., 7-10, shows M&M transfers for elementary grades K-6 separately but does not break out M&M's to K-3 centers separately.) Petitioners Brinegar's analysis of the April 1979 Report shows that of the 129 Early Childhood Education Centers in the DISD⁵, there are 76 schools with a minority population of more than 10% but less than 90%, and there are no K-3 centers with 100% Anglo population. (DISD April 1979 Rept. App. "A", Vol. 1, 62-298)

⁴There is no assignment and transportation of students for purposes of desegregation to the high schools; however, there are at the high school level a substantial number of majority to minority transfers, plus a large number of students attending various magnet schools which makes these numbers difficult to analyze. (DISD April 1979 Rept. 8).

⁵This excludes two one-grade centers, but includes one two-grade centers and two three-grade centers.

9. Changing Ethnic Trends in Inner-City, Effect of School Desegregation Plan on Efforts to Combat Urban Blight in the Inner-City.

The District Court also had the benefit of testimony regarding changing ethnic demographics of housing patterns in Dallas, particularly in older neighborhoods, from various expert witnesses. The evidence showed that the City of Dallas and the DISD were actively involved in inner city programs. (R. Vol. VIII, 377-381, Estes Pet. App. "B", 16a)

Mr. Irving Statman and Mr. James Calhoun, who studied housing trends as part of the staff of the Department of Housing and Urban Rehabilitation for the City of Dallas, testified regarding the statistical studies and trends in ethnicity of the residential population in the Western Oak Cliff area and the City of Dallas generally. (R. Vol. VI, 164-174, Vol. VII, 178-179, 183-198) Mr. Calhoun testified that statistically minorities living in integrated neighborhoods were on the uptrend and that the number of integrated neighborhoods was increasing as of 1974 when he had last conducted his tests. (R. Vol. VII, 184-187)

Mr. Ram Singh (R. Vol. VIII, 351-354, Brinegar Ex. 4, 352, 354) and Mrs. Susan Murphy (R. Vol. VIII, 331-337), who were experts on demographics and neighborhood studies for the City of Dallas, testified regarding the special studies done by the City of certain statistical communities, which overlap the area occupied by the class represented by the Brinegar Intervenors, which indicated their racial and ethnic trends and the existence in many sections of urban blight and the inner-city character of certain areas. (R. Vol. VIII, 335-341, 342-345, 347-351, 355-364, 364-370, 370, 372, 373, Brinegar Ex. 3, 5, 6, 7, 8, R. Vol. VIII, 347,

349, 355, 357, 364, 370, 372, 373, 381-383; compare Brinegar Ex. 1 and 2, R. Vol. VIII, 335, 337, 342; Brinegar Ex. 6, 2, R. Vol. VIII, 355, 370 and the J. L. Long Junior High School zone on Hall's Ex. 3, R. Vol. 123, 128)

Mr. William Darnell, also an expert in urban rehabilitation (R. Vol. VIII, 374-377) and Mrs. Murphy as well as representatives of the neighborhoods involved, testified regarding a pilot program called the "East Dallas Demonstration Project", considered at the time to be unique, combining efforts of area businesses, residents, the City and the DISD to combat urban blight and rehabilitate the older neighborhoods of East Dallas. (R. Vol. VIII, 345-346, 381-387, 399-403; R. Vol. IX, 16-17, 19) One of the criteria for selecting East Dallas for the Demonstration Project was that it be ethnically or racially mixed. (R. Vol. VIII, 383) In Dallas the socioeconomic mix was of particular concern to the city planning experts in trying to develop a strategy to combat urban blight. (R. Vol. VIII, 386-391)

The testimony was that, in Dallas a plan to combat urban blight, that is, revitalize deteriorating neighborhoods, will promote natural integration as it would tend to stop the out-migration of Anglos from the area and would encourage in-migration of middle income Anglos. (R. Vol. VI, 167-169, R. Vol. VIII, 393-396.) The growth of Dallas generally comes from in-migration. (R. Vol. VII, p. 197)

The Court also had the benefit of testimony from experts that a desegregation plan involving transportation of students out of the inner-city blighted neighborhoods with the demographic and family income spreads of core or inner-city neighborhoods may discourage the needed in-migration

of Anglos and other middle income families. (R. Vol. VI, 167-169, 170-171; Vol. VII, 187-188; Vol. VIII, 395-396) and, that assignment of Blacks into such a neighborhood may have a similar effect. (R. Vol. VI, 171, 173)

The plaintiffs' (Respondents herein) expert, Dr. Willie, (R. Vol. III, 151-160) and attorney Edward Cloutman, and the Intervenor N.A.A.C.P.'s (Respondents herein) expert, Dr. Hunter (R. Vol. IV, 106) agreed that racial balance through changes of housing patterns was a preferable method to a plan calling for assignment and transportation of students outside of the areas of their residence. (Though, the witnesses did emphasize their primary concern was desegregation of the schools.)

10. Findings of the DISD's Good Faith After 1971.

The District Court found that the DISD was in good faith facing up to the educational problems of minorities in the DISD including inequalities and its own prejudices. (Estes. Pet. App. "B", 15a-18a, 40a, 51a) Indeed, the plaintiffs' own witnesses supported this finding in several material respects. Dr. Jose Cardenas testified to the favorable comparison between bilingual education in the DISD and elsewhere. (R. Vol. II, 334-338, 340) Ms. Evonne Ewell, who was an assistant superintendent in the DISD dealing with textbooks, testified that while textbooks containing no racially prejudicial material were not available, the DISD was seeking to remedy the situation. (R. Vol. II, 193-194, 202-204, 206, 213-218) Dr. Francis Chase, from whose 200 page report (the "Chase Report") the District Court quoted at length, stated that the DISD, while not perfect, was "either preeminent or close to the top among

public school systems". (Estes Pet. App. "B", 15a) In this regard the Chase Report pointed to the DISD's

"[f]rank acknowledgment of barriers to equal educational opportunity, followed by constructive measures such as the Affirmative Action Program, the extension of Multi-Ethnic Education, the implementation of Plan A for better treatment of learning disabilities, and support for inner-city school renewal projects." (Estes Pet. App. "B", 16a)

11. Implementation of the Plan and Receipt of Financial Support from the Voters.

The implementation of the Plan in the DISD was without the extreme protests and violence which has so often accompanied the start of desegregation plans.⁷ (Dallas Alliance Amicus Curiae Brief to Ct. of App., 20-23) This was brought about by the District Court's wise challenging, and bringing in to participate, of the Dallas community through the Dallas Alliance. On December 11, 1976, the DISD's voters, who are predominantly Anglo⁸, voted the authority for bonds in the amount of \$80,000,000 for purchase of sites and construction and equipment of school buildings. (R. Feb. 24, 1977 hearing in District Court, 6-7)

⁸The exact ethnicity of the actual population of the areas within the DISD is not known, but it is believed by the DISD to be predominantly Anglo. (Estes Pet. 6, R. Vol. I, 279, 405-406)

⁷Of the 133,648 students in the DISD as reported March 1, 1979, to the District Court, 11,973 were transported for purposes of the Plan. (DISD April 1979 Rept., 4-5) In addition, 4,590 students were voluntarily assigned and transported to the magnet schools (called Vanguard, Academies and Magnets in the Plan) (Estes Pet. App. "B", 61a-62a; DISD April 1979 Rept., 6).

12. 1978 Court of Appeals Decision to Remand for Findings When Various Desegregation Tools Were Not Used by District Court.

Against this background the Court of Appeals on April 21, 1978, sent the case back to the District Court. 572 F.2d 1010 (Estes Pet. App. "C", 130a-146a). The Court of Appeals appeared to be primarily concerned with the continued existence of one-race schools, stating with regard to the student assignment part of the Plan:

"We cannot properly review any student assignment plan that leaves many schools in a system one race without specific findings by the district court as to the feasibility of these techniques. [citation] There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing. [citation]" 572 F.2d at 1014. (Estes Pet. App. "C", 137a)

"... If the district court determines that the utilization of pairing, clustering, or other desegregation tools is not practicable in the DISD, then the district court must make specific findings to that effect." 572 F.2d at 1015. (Estes Pet., App. "C", 138a)

SUMMARY OF ARGUMENT

1. The Court of Appeals incorrectly ordered remand for further findings in view of the number of one-race schools in the DISD to determine why the *Swann* remedies of pairing and clustering were not ordered as part of the DISD's desegregation plan, particularly citing the need for time and distance studies for assignment and transportation of students outside of the areas in which they reside, i.e.,

busing. In fact, the only finding that vestiges of a state-imposed dual system exist in the DISD were made in 1971 by the District Court, based solely on the existence of one-race schools, with no findings that such one-race schools were in existence by reason of the intended acts of the DISD. In 1976 the District Court had made no other findings with respect to the *existence* of vestiges but had found correctly that vestiges of the unconstitutional dual system *did not exist* in large areas of the DISD in which the school population was naturally integrated through changing residential housing patterns. Under this Court's decisions no desegregation plan should be formulated without a determination of the specific unconstitutional wrongs to be rectified. Predominantly Anglo or minority schools cannot be vestiges of a state imposed school system unless they result from the intended acts of the DISD. *Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 597 (1976); *Dayton Board of Education v. Brinkman*, 433 U.S. 417, 97 S.Ct. 2766, 2770, 2772, 2774, 53 L.Ed.2d 861 (1977); *Austin Independent School District v. U.S.*, 429 U.S. 990, 97 S.Ct. 517, 50 L.Ed.2d 603 (1977); see also *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976).

2. There were no findings that the plan ordered was necessary to eliminate vestiges of a state-imposed dual system, as is required in order for the Federal Court to intervene in the operation of a school system. *Dayton*, 97 S.Ct. at 2770, 2774; *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16, 31-32, 91 S.Ct. 1267, 2704-2706, 28 L.Ed.2d 544 (1971); *Pasadena, supra*, 427 U.S. at 434-440, 96 S.Ct. at 2704-2706; *Milliken v. Bradley*, 418 U.S. 717, 738, 94 S.Ct. 3112, 3124, 41 L.Ed.2d 1069 (1974).

3. This analysis suggests that the Court should, as it did in *Austin II* and *Dayton*, return this case to the lower courts for findings as to whether predominantly minority or Anglo schools in the DISD are in fact vestiges of a dual system with the instruction that they can only be so if the current existence of predominantly majority or minority populations in these schools is a result of intended actions of the DISD. A further instruction would be required in view of the District Court's formulation of the current DISD plan without any findings which support the conclusion that the system wide plan adopted for the DISD is necessary for the elimination of specific vestiges of the dual system; that is, that such findings are required.

4. However, this Court, on the opinions and record before it, could determine that the DISD has achieved current unitary status, thus eliminating the need for further court action. The record has been developed over years of litigation beginning in 1971. There is no evidence in the record that any school has a predominantly Anglo or minority population as a result of the intended acts of the DISD. Even schools which may have a minority population prior to the DISD ceasing to be a dual system have been operating in a freedom of choice assignment pattern mandated by the Federal Court since 1965, thereby making it unlikely that any students are currently in the DISD who were there at a time when any part of the DISD may have been considered to be a dual system. Further, the District Court found in 1976 that the DISD has undertaken in good faith and on its own to equalize the educational opportunities for all children in the DISD. The DISD, like all major metropolitan areas, is experiencing demographic shifts which are not the result of its actions. Not the least of these is in the inner-city areas which are trending towards either predominantly minority or ethnically mixed residential

patterns. In these circumstances and after 14 years of freedom of choice under Federal Court mandate, the existence of one-race schools cannot be charged to the DISD.

5. Areas in which a school population resides because of residential housing patterns cannot be vestiges of a dual system as the District Court correctly concluded. However, the principle emphasized by the Court of Appeals for elimination of one-race schools through assignment and transportation of students outside the areas of their residence, when applied to a school district like the DISD, may mistakenly be interpreted by the District Court as calling for busing of students from naturally integrated areas. Petitioners Brinegar respectfully request that the Court instruct the lower courts that preservation, continuation and encouragement of naturally integrated areas is a guiding principle to be followed in the formulation of school desegregation remedies because of necessity, such areas cannot be vestiges of a state-imposed dual system, nor can their preservation do anything but encourage the elimination of any vestiges that may exist.

6. Petitioners Brinegar also respectfully request that this Court instruct the lower courts to consider the effect of school desegregation plans upon other activities of the communities in which the plans operate, including those of other governmental agencies, and particularly those actions which tend to encourage natural integration through residential housing patterns. These actions in and of themselves reduce one-race schools and thus tend to eliminate any vestiges of a state-imposed dual system. *Swann, supra*, 402 U.S. at 21-22, 28, 91 S.Ct. at 1278, 1282; *Brown v. Board of Education*, 349 U.S. 294, 300, 75 S.Ct. 753, 756, 99 L.Ed. 1083 (1955); *Milliken, supra*, 418 U.S. at 738, 94 S.Ct. at 3112.

ARGUMENT

1. There have been no findings of fact which under this Court's decisions define the specific vestiges of the unconstitutional dual system in the DISD upon which a desegregation plan designed to eliminate such specific vestiges could be formulated.

a. *Court of Appeals' remand was for the wrong reason.*

The Court of Appeals' reasons for remand centered on the continued existence of one-race schools in the DISD and the absence of findings of fact which justified their continued existence, primarily it appears meaning time-and-distance studies having to do with assignment and transportation of students to areas of the DISD other than that in which they reside. 572 F. 2d at 1014-1015. "Busing" has become the common word for this kind of assignment and transportation as part of a desegregation plan. The Brinegar Petitioners contend that the Court of Appeals' purpose for the remand was in error.

If the Court of Appeals was to remand this case, it should have done so for the same reasons this court ordered remand for further findings in *Austin Independent School District v. United States*, 429 U.S. 990, 97 S.Ct. 517, 50 L.Ed. 2d 603 (*Austin II*), and in *Dayton Board of Education v. Brinkman*, 433 U.S. 417, 97 S.Ct. 2766, 53 L.Ed. 2d 861; (1977) (*Dayton*). See also *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed. 2d 599 (1976) (*Pasadena*); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed. 2d 450 (1977) (*Arlington Heights*). That is to say, the District Court should have been ordered to reexamine its earlier decision that vestiges of a dual system existed in the DISD in light of

this Court's decision in *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed. 2d 597 (1976) (*Washington v. Davis*), which was decided on June 7, 1976 subsequent to the District Court's decisions of March 10, 1976, as finally ordered on April 7, 1976. Indeed, by the time of the Court of Appeals' decision in April 1978, the Court of Appeals had the benefit of *Austin II*, *Dayton*, *Pasadena* and *Arlington Heights*.

b. First the vestiges of the dual system must be determined, then a plan formulated to eliminate those vestiges only.

Quoting from *Keyes v. School District No. 1*, 413 U.S. 189, 205, 93 S.Ct. 2686, 2696, 37 L.Ed. 2d 548 (1973), the majority opinion in *Washington v. Davis*, stated, "the essential element of *de jure* segregation is 'a current condition of segregation resulting from intentional state action'". *Supra*, 426 U.S. at 240, 96 S.Ct. at 2048. And, the court rejected the proposition that an official act, without regard to whether it reflects a racially discriminating purpose, is unconstitutional solely because it has a racially disproportionate impact. *Washington v. Davis, supra*, 426 U.S. at 239; 96 S.Ct. at 2047. See also *Arlington Heights, supra*, 97 S.Ct. at 563.

Washington v. Davis really stated and reaffirmed the same legal principles which would be required in any other legal proceeding dealt with by our courts, that before granting equitable relief, which in law is considered extraordinary, one must first carefully delineate (make findings) as to what is the violation that gives rise to the relief. Then, the relief itself must be tailored to remedy the violation. *Swann, supra*, 402 U.S. at 15-16, and 91 S.Ct. at 1276. Equity does not punish, it remedies. And the

remedy should not exceed the limit of the violation. *Milliken*, 418 U.S. at 738; 94 S.Ct. at 3124. Also there must be consideration of alternative remedies, the more extraordinary and extreme should be reserved for the extreme situations. "As with any equity case, the nature of the violation determines the scope of the remedy." *Swann, supra*, 402 U.S. at 16, 91 S.Ct. at 1276. Any interference by a court through injunctive order carrying with it the threat of fine or imprisonment if violated, in a duly elected school board's operation of a school district is, after all, extreme, especially where as in the DISD there is no suggestion of discrimination in the election of the Board members. *Pasadena, supra*, 427 U.S. at 438-440; 96 S.Ct. at 2706.⁸

As stated by the majority of this court in *Dayton*:

"... But our cases have just as fairly recognized that local autonomy of school districts is a vital national tradition [citations] It is for this reason that the case for displacement of the local authorities by a federal court desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles. [Cf citation]"

Dayton, supra, 97 S.Ct. at 2770.

c. The District Court has never made the necessary findings that vestiges of the dual system exist in the DISD.

The fact is that the District Court has never made the necessary findings of fact required by those decisions of this court with regard to the continued and current existence of vestiges of an unconstitutional dual system in the

⁸The members of the DISD Board of Trustees are elected from single member districts and the members are of differing ethnic backgrounds.

DISD which would support ordering a system wide desegregation plan such as the one the District Court adopted.

The applicable findings of the District Court can be summarized as follows:

1. In its 1971 Opinion the District Court found that "vestiges" of the dual system remained, because of the existence of one-race schools. The District Court did not find that the DISD was a system wide dual system. (Brinegar Pet. App. "A", A-2)

2. In its 1976 Opinion, the District Court found that while "...significant strides in desegregation had been made since the [District] Court's 1971 order as a result of natural changes in residential patterns . . .", the DISD in 1975-7976 could not be considered to be wholly free of the vestiges of a dual system, pointing again to predominantly minority schools. (Estes Pet. App. "B", 14a-15a)

Upon that record, and with no finding that the current existence of predominantly minority schools were a result of intentional actions of the DISD, the District Court ordered a system wide desegregation plan (though excluding naturally integrated areas from the student assignment plan) including a projected nonvoluntary assignment and transportation of 17,328 students to schools located outside the areas of their residence for purposes of desegregation. (Estes Pet. App. "B", 120a)

d. Similarities of the instant case to Dayton.

In *Dayton*, this Court was faced with a situation involving a school district in which this Court's description of the District Court's findings may be summarized as (i) that a great majority of the district's schools were racially im-

balanced, but there was no evidence (as there is none in the instant case) of racial discrimination in the establishment or alteration of attendance boundaries or in the site selection and construction of new schools and school additions; (ii) that high school optional attendance zones, two in particular, may have had significant potential effects in terms of increased racial separation; and (iii) that a newly elected Board's rescission of resolutions of a previous Board which had acknowledged a role played by the Board in the creation of segregated racial patterns and had called for various types of remedial means, together were cumulatively a violation of the Equal Protection Clause. This Court then reiterated the principle expressed in *Washington v. Davis*, stating:

"[t]he finding that the pupil population in the various Dayton schools is not homogeneous, standing by itself, is not a violation of the Fourteenth Amendment in the absence of a showing that this condition resulted from intentionally segregative actions on the part of the Board . . ."

and, went on to state that the District Court's findings as to the effect of optional attendance zones must also meet the test of *Washington v. Davis*, but that even if such effect was an intentionally segregative action it only was so as to the high school districting. In other words, the unconstitutional vestige was limited. The finding that the rescission by the newly elected school board of a prior board's actions was an unconstitutional act, the majority decision noted was of questionable validity. That question could only be resolved by determining if the rescinded resolution was constitutionally required, a finding that had never been made. *Dayton, supra* 97 S.Ct. at 2772.

As in the instant case, the Court of Appeals seemed to have viewed the present structure of the Dayton school system as a sort of "fruit of the poisonous tree", referring to the possibility that some of the racial imbalance may have resulted from the three instances of segregative action found by the District Court. *Dayton, supra*, 97 S.Ct. at 2774. This Court observed that the Court of Appeals was

"...vaguely dissatisfied with the limited character of the remedy which the District Court had afforded plaintiffs, and proceeded to institute a far more sweeping one of its own, without in any way upsetting the District Court's findings of fact or reversing its conclusions of law." *Dayton, supra*, 97 S.Ct. at 2774.

The District Court had instituted a large scale plan involving transportation of a large number of students concluding there existed no other feasible way to comply with the Court of Appeals' mandate. As this Court observed "... the District Court would have been insensitive indeed to the nuances of the repeated reversals of its orders by the Court of Appeals had it not reached this conclusion." (*Dayton, supra*, 97 S.Ct. at 2774)

The *Dayton* situation has many similarities to the instant case. The District Court's orders in the instant case had been reversed by the Court of Appeals in 1975 and 1978 with strong language implying the need for desegregation tools which could only mean busing since most other tools are already in use, including an affirmative action plan for the faculty, majority to minority transfers, appointment of a tri-ethnic committee, and control of site selection and construction, coupled with the development of magnet schools with district wide attendance zones, and special edu-

ational programs for disadvantaged children. (Estes Pet. App. "B", 15a-18a, 33a)

While in view of the language of the Court of Appeals in its 1975 decision (517 F.2d at 109-110), the District Court in the instant case, can hardly be blamed for ordering in 1976 a system wide student assignment plan for the DISD; nevertheless, with respect to the one-race schools in the DISD, the District Court as in *Dayton*, has not found

1) that the existence of any of such schools in the DISD has come about because of the intended acts of the DISD; or

2) that the current condition of any of those schools having a minority school population is the result of the intended acts of the DISD.

In fact, even with respect to the one-race schools which the District Court acknowledged became such after the DISD ceased to be a dual system, the District Court made no effort to distinguish between those schools and those that were predominantly one-race prior to the time students were assigned to those schools on a nondiscriminatory basis. (Brinegar Pet. App. "A", A-2 - A-3) Obviously any schools remaining in the DISD which became predominantly minority at a time when the dual system still existed may require close scrutiny to determine if vestiges still remain in those schools, though that distinction itself would not be enough to show that vestiges remain in those schools, since a finding that the *current* condition of the school was a result of the intended acts of the DISD, would still be required. See *Washington v. Davis, supra*, 426 U.S. at 239, 96 S.Ct. at 2047.

Again, as in *Dayton*, because we do not know what vestiges existed in the DISD, there is no basis on this record to conclude that the Plan ordered was necessary for the removal of vestiges of the dual system.

e. *At minimum, this Court should remand for further findings.*

The foregoing analysis can lead to the conclusion that this Court should remand to the lower courts, with instructions to the District Court,

1. to determine if the population of any school in the DISD is currently predominantly Anglo or minority because of the intended actions of the DISD, specifying which schools, if any; that is to say, the District Court should determine whether such schools are specific vestiges of the state-imposed dual system utilizing the test of *Washington v. Davis*, as developed in *Dayton*; and

2. if the District Court finds any such vestige to exist, to formulate a remedy which will eliminate that vestige only, with findings showing that the remedy is necessary to eliminate that vestige. *Swann, supra*, 402 U.S. at 16, 31-32, 91 S.Ct. at 1276, 1283-1284; *Pasadena, supra*, 427 U.S. at 434-40, 96 S.Ct. at 2704-2706; and *Dayton, supra*, 97 S.Ct. at 2774.

f. *Based on the record this Court could find the DISD to be unitary.*

However, an alternative exists. This Court has the power to review this record and determine if the record clearly

supports the finding that no vestiges of a dual system exist in the DISD.⁹ To find the existence of predominantly minority schools constitutes a "vestige" of the unconstitutional dual system, requires a finding that such were the intended results of actions of the school board of the DISD as its governing body. As stated in *Dayton*:

"... the question of whether demographic changes resulting in racial concentration occurred from purely neutral public actions or were instead the intended result of actions which appeared neutral on their face but were in fact invidiously discriminatory is not an easy one to resolve." (*Supra*, 97 S.Ct. at p. 2772)

However, as this Court has observed in *Pasadena*, human migration resulting in changes in residential patterns of racial and ethnic groups is normal and is not necessarily the result of school board actions. (*Supra*, 427 U.S. at 436, 96 S.Ct. at 2704). Communities served by unitary school systems will not necessarily remain demographically stable and in fact few will do so. *Swann, supra*, 402 U.S. at 31-32, 91 S.Ct. at 1283-1284. Certainly the evidence in the instant case indicates that the demographics of the DISD both residentially and in school population, have been rapidly shifting for many years. (See Defendants' Exhibits 1, 2 and 3, R. Vol. I, 76, 77, 81, 85, and Statement of Case, *supra*, 12-16).

The question of whether the current demographics of the DISD were not the *intended* result of the DISD's school

⁹It need not be assumed that all matters covered in the District Court's Plan will be dismantled and abandoned because the District Court no longer mandates the Plan. Many aspects of the Plan have been in effect for many years, such as majority to minority transfers and the magnet schools, and have proven educationally sound. The DISD's commitment to these concepts is on the basis of their being educationally sound, and good faith would probably require their continuance.

board's actions may not be so difficult because all students in the DISD have been assigned since 1965 pursuant to the orders of the federal court. And, indeed, the District Court has found that the DISD "has acted in good faith since this [District] Court's order in 1971 and has made reasonable efforts to fulfill the obligations imposed by that order." (DISD Pet. App. "B", p. 40a)

The record is complete and represents a careful review of the facts about the DISD. In large measure those facts which bear on the issue of whether vestiges of the dual system exist in the DISD are undisputed.

Since 1965, all students in the DISD have been assigned to schools under orders of the federal courts. In 1979, it is unlikely that any students remain in the DISD who were registered in 1965. The implication of the District Court's decision in 1971 was that the DISD was not then a dual system. The evidence is that population trends as in other dynamic metropolitan areas, were and are constantly changing with a tendency on the part of older areas to become either ethnically mixed or predominantly minority. (R. Vol. VII, 175-188) The demographics of this pattern are recognized to occur for reasons unrelated to state or school board action. See *Pasadena*, *supra*, 427 U.S. at 435-436, 96 S.Ct. at 2704; *Austin II*, *supra*, 97 S.Ct. at 591.

Even with respect to school populations in schools which may have been predominantly minority before 1965, it must be assumed that after a period of 14 years of nondiscriminatory student assignment, the fact those schools remain such is not the result of the DISD's actions. In view of the rapid growth and shift of population in the DISD, the assignment of students pursuant to court order for the last 14 years, and the District Court's findings of the DISD's

good faith, it is difficult to see how the DISD actions can be said to have had the intended result of currently continuing vestiges of the dual system.

To say they did would be to suggest that the only way such vestiges can be eliminated is to continue to transport Anglos to those schools because of events which occurred many years ago which neither the Anglo nor minority students, or, chances are, their parents, had anything to do with. If this were the rule, in view of the apparent fact that ethnic and racial groups very often freely choose to live in groups and not mix, and to continue to live together rather than in so-called desegregated environments of multiple racial and ethnic groups, such schools might never be found to be unitary on the basis of residential housing patterns.¹⁰

¹⁰Eleanor P. Wolf in her article *Northern School Desegregation and Residential Choice*, 1977, *The Supreme Court Review*, p. 63, which reviews the literature and studies of the effect of school desegregation plans on residential choice of races, observed:

"Although there are thousands of examples of mixed areas temporarily creating mixed schools and many instances where a reasonably biracial area with few white children in it has coexisted with a predominantly black school, there is no noted instance where a mixed school produced a mixed neighborhood." (1977 *The Supreme Court Review*, at p. 69)

She concludes:

"There is no research to suggest that, even in the absence of discrimination, blacks would distribute themselves randomly. All that we know about the social construction of black ethnicity would argue against such an outcome. If an approximately random distribution continues to be the core meaning attached by the NAACP to school desegregation, a continued system of racial quotas would be required. There is little reason to anticipate that metropolitan-wide racial dispersion in schools would affect black residential preferences, except to remove one of the motives sometimes reported by blacks for seeking homes in white neighborhoods." (1977 *The Supreme Court Review*, at p. 78-79)

After passage of some period of time, absent overt actions of the school board intended to continue the existence of segregated schools, it should be apparent that even schools originally part of a dual system are no longer *vestiges* of such. To say otherwise results in a system of racial quotas which this Court has repeatedly prohibited. *Swann, supra*, 402 U.S. at 31-32, 91 S.Ct. at 1283-1284; *Pasadena, supra*, 427 U.S. at p. 434-436, 96 S.Ct. at 2704-2705.

The real question is, what constitutes elimination of the dual system where schools continue to be predominantly minority? The answer must be that so long as the school district does not cause by its intentional acts the continuation of that condition, the fact that such schools remain predominantly majority will not be considered an element or "vestige" of a state-imposed dual system. It is difficult to see how, in an environment of freedom of choice, majority to minority transfers, magnet schools, faculty allocations by ethnicity and court scrutiny of site selection of new school construction, all going on for a period of years, that the continuation or coming into existence of predominantly one-race schools can be laid at the DISD's door.

Indeed, there is no evidence that the DISD's actions have caused any school to become predominantly one ethnic group. In fact, all school site selection and construction since 1971, has been done only with specific approval of the federal courts after hearing. The DISD has been found by the District Court to be in good faith as far as providing equal educational opportunities to all students, the very antithesis of actions intended to be discriminatory. This was supported by testimony of witnesses called by the plaintiffs at trial—notably Dr. Francis Chase, a highly regarded educator, Dr. Jose Cardenas, an expert regarding bilingual education and Evonne Ewell, herself a Black person and

an expert on bias in educational materials; who was Assistant Superintendent of the DISD charged with reviewing curriculum and textbooks. (Estes Pet., App. "B", 15a-18a; Statement of the Case, *supra*, 11, 17)

The DISD's research and evaluation of its programs was considered by Dr. Chase to be competent to indicate deficiencies in program implementation or operation, with good faith efforts being made to remedy the problems discovered. (Estes Pet. App. "B". 15a-16a, 17a) Certainly the fact that the DISD is not perfectly meeting all of its problems is not unconstitutional but the fact that it is competent in determining them and follows up with solutions, especially in the area of equality of education, strongly supports the District Court's conclusion as to its good faith.

g. *Summary.*

In summary, the District Court's failure to define vestiges of the dual system or to make the findings of intentional discriminatory action called for by the decisions of this Court, make it impossible to justify the system wide remedy the District Court ordered, or for that matter, any particular aspect of the Plan which constitutes the remedy, except the finding that vestiges of the dual system no longer exist in areas which the District Court specifically found to be desegregated through changes in residential housing patterns.

2. The areas of the DISD in which the school populations are ethnically mixed by reason of normal housing patterns cannot be vestiges of a state-imposed dual system. The continuation, preservation and encouragement of such naturally integrated areas is a guiding principle to

be considered when formulating a desegregation plan to remedy other vestiges of a dual system.

As more fully explained in the Statement of the Case (*supra*, 11-12), the District Court found large areas of the DISD to be integrated through normal residential housing patterns, including the area represented by Petitioners Brinegar. The District Court had ample evidence of the trend in the DISD of the changing ethnic mix of school populations through residential patterns and so noted in its opinion. (Estes Pet. App. "B", 13a-15a, 36a, 42a-44a; Statement of the Case, *supra*, 12-14) For example, Carter High School in Oak Cliff in 1970 had an Anglo population of 96.6%, no Blacks and a Mexican-American population of 3.1%. As part of the desegregation remedy ordered in 1971, Black students were bused into Carter High School from other areas. By 1975 Carter High School had become 30.9% Anglo, 65.2% Black and 3.8% Mexican-American, with most of the Black students residing in the school zone. Similar developments had occurred in other schools. (Estes Pet. App. "B", 43a-44a)

The student assignment portion of the Plan adopted by the District Court did not substantially affect those areas. (Estes Pet. App. "B", 27a)¹¹ The Court of Appeals generally noted the existence of naturally integrated areas and the statement in the Plan that "[w]her-

¹¹Even so, the Plan which was ordered by the District Court affected the naturally integrated areas in that it required uniform grade level configurations in new standardized school units of grades K-3, 4-6, 7-8 and 9-12 and in the case of the Thomas Jefferson and J. L. Long (East Dallas) zones, because those areas are located in the centralities of the subdistricts in which they are located, some of the grade 4-6 and 7-8 centers those into which students from other areas are assigned and transported, were located in those areas. (Estes Pet. App. "B", 57a, 86a-88a, 93a-95a). Also the non-student assignment features of the Plan affected everyone in the DISD including those in the naturally integrated areas.

ever possible student assignments are retained in 'naturally integrated' areas" (572 F.2d at 1013 and 1014), but did not discuss the District Court's conclusion that vestiges of the dual system no longer exist in those areas.

The Court of Appeals decision does not specifically hold that students must be assigned or transported from areas found to be naturally integrated to other areas for desegregation purposes. And, the Brinegar Petitioners do not contend that it did.

Nevertheless, the Court of Appeals has, as stated elsewhere, remanded for more findings on why pairing, clustering or other desegregation tools were not utilized by the District Court (which unutilized desegregation tools, by a process of elimination, had to involve busing) referring specifically to the need for time-and-distance studies. 572 F.2d at 1015. For the following reasons, this might be interpreted to imply the need to reassign and transport students from naturally integrated areas:

1. In the DISD, the naturally integrated areas are adjacent and therefore close to the predominantly minority areas. (Statement of the Case, *supra*, 9-10) The naturally integrated areas around Thomas Jefferson High School and J. L. Long Junior High School are between areas which are predominantly minority and those having concentrations of Anglo population; thus, in those naturally integrate areas the students, both Anglo and minority, are closer for assignment and transportation purposes to both the predominantly minority and the majority Anglo areas.

2. The Anglo population in the DISD available to be utilized for the purpose of assignment and transportation to other areas is small and becoming smaller. [The Anglo student population declined from 69% in 1971, to 41.1% in 1975, and to 33.5% at March 1, 1979 (Ct. of App. Op.,

572 F.2d at 1013, fn. 6; DISD 1979 Rept. Vol. 1, App. "A", 301.]

The Court of Appeals emphasizing the need to eliminate one-race schools comes close to suggesting in practical effect that the principle of eliminating one-race school overrides all else in forming a desegregation plan. 572 F.2d at 1014-1015.

Petitioners Brinegar urge this Court that the continuation, preservation and encouragement of naturally integrated areas, that is, areas where school population is ethnically mixed through changing residential patterns, should be a guiding principle in the formulation of a desegregation plan; because by definition, as the District Court concluded, such areas do not contain vestiges of a state-imposed dual system, therefore, there is no constitutional violation to remedy in those areas. The desegregation techniques sanctioned in *Swann* were designed to eliminate one-race schools. In those areas they are eliminated. *Swann*, *supra*, 402 U.S. at 26, 91 S.Ct. at 1280-1281. Under the *Washington v. Davis* test, there could be no intention on the part of the DISD to impose a dual system in these areas.

The use of desegregation tools involving assignment and transportation to other areas does tend to cause people who have the ability to do so, particularly Anglo, to leave the public schools for other school districts or private schools¹², and reduce the likelihood of in-migration of

¹²There is little dispute that a desegregation plan causes some out-migration. The Plaintiffs' Dr. Willie conceded as much. (R. Vol. III, 159) The Petitioners Curry put on extensive testimony of the effects of such a plan on out-migration. The testimony of Dr. Armor was particularly dramatic (R. Vol. VII, 239-240), stating that in the 16 school districts he studied the loss of white students jumped from 2% per year to 10% for each of the two years following implementation of a mandatory desegregation plan. The effect

of these plans was also indicated by Dr. James Coleman's deposition testimony on written interrogatories (R. Vol. VIII, 314-318), in particular the testimony in answer to cross interrogatories, at p. 9-11 of his deposition:

"Q If your answer to Question No. 7 above is affirmative [it was] state the nature and extent of such effect on the number of white students enrolled in the DISD. If, in your opinion, such effect would be to reduce the number of white students enrolled in the DISD, state which of the following factors, if any, would be expected to influence the decision of white parents to remove their children from the DISD, and the nature and extent of each such influence:

- a) The family income of the white parents, and their financial ability to send their children to schools outside the DISD.
- b) The racial composition of the schools in which the white students are presently enrolled.
- c) The racial composition of the schools to which the white students are reassigned (referred to below as 'new schools').
- d) The location of, and environment surrounding, the new schools.
- e) The distance from the students' homes to the new schools.
- f) The manner of transporting students to the new schools.
- g) The relative quality of education expected at the new schools.
- h) The expectation of physical harm to students at the new schools. State all other factors which, in your opinion, would influence the decision of white parents to remove their children from DISD schools, and state the nature and extent of each such influence.

"A My opinion is that such reassignment would substantially reduce the number of white students enrolled in the DISD. The amount of such reduction would depend on the number of students reassigned as described in Question 7. It is my opinion that all the factors described in (a) through (h) would influence the decision of white parents to remove their children from the DISD, with the possible exception of (f). This opinion is not based on statistical analysis, because effects of these factors cannot be easily separated, but on general knowledge gained in the course of my research.

Anglos to many naturally integrated areas which are coterminous with older inner-city areas. (R. Vol. VII, 187-188; R. Vol. VIII, 348, 394-396). Mr. Justice Powell's observations in his footnote to his concurring opinion in *Austin II*, apply very much in this situation:

"The individual interests at issue here are as personal and important as any in our society. They relate to the family, and to the concern of parents for the welfare and education of their children — especially those of tender age. Families share these interests wholly without regard to race, ethnic origin, or economic status."

This will tend to cause the naturally integrated areas to become predominantly minority which would frustrate the purpose of a desegregation plan. Brinegar Petitioners do not suggest that "white flight" or for that matter any flight of students from the DISD in and of itself should be a reason to not remedy a constitutional violation. But in a naturally integrated area there is no constitutional violation to be remedied. To take action which jeopardizes the ethnic balance of such a neighborhood would not accord with the balancing of public and private needs and interests which this Court in *Swann*, *Brown II* and *Milliken*, has called for. *Swann*, *supra*, 402 U.S. at 12, 91 S.Ct. at 1274; *Brown II*, *supra*, 349 U.S. at 300, 75 S.Ct. at 756; *Milliken*, *supra*, 418 U.S. at 738, 94 S.Ct. at 3112.

Again, if the goal of a desegregation plan is the elimination of one-race schools which are vestiges of the dual sys-

"Q In your opinion, is there any way to reassign students as described in Question No. 7 above without a resulting reduction in enrollment of white students in the DISD? If so, how could that be accomplished?"

"A No."

tem as stated in *Swann*, then that purpose is best served by encouraging the coming into existence and continuation of schools which are integrated through neighborhood and residential patterns. As most school districts recognize, neighborhood assignments of students fit the traditions and desires of the population of the school district and therefore are more stable.

3. In formulating school desegregation plans, the courts must consider the effects of such plans upon other activities of the communities in which such plans operate, in particular those which the court finds tend to encourage natural integration through residential housing patterns.

If elimination of one-race schools, particularly minority one-race schools, which are vestiges of a state-imposed dual system is a proper goal of a desegregation plan, it follows that the Courts should consider all actions which will affect the attainment of that goal. Obviously, school districts do not exist in a vacuum. They are located in and are a part of communities. Actions of communities interrelate. (R. Vol. VIII, 393-395) The services provided by a school district are one of the services required by the community from its governmental units, along with police protection, fire departments, building code enforcement, road maintenance, zoning, and the like.

The District Court had before it evidence that the plan would affect the efforts of the City of Dallas and various private groups to try to revitalize inner-city neighborhoods in Dallas. (R. Vol. VI, 169-172, 173-174; Vol. VII, 187-188; Vol. VIII, 348, 294-296) This evidence indicated that those efforts not only tend to maintain existing naturally integrated areas but encourage others coming into existence by encouraging the in-migration of middle income families

including Anglos to those areas. (Statement of the case, *supra*, 14-16) Indeed, this Court recognized the influence of neighborhoods of the location of schools in *Swann, supra*, 402 U.S. at 21-22; 91 S.Ct. at 1278, noting:

"People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods."

Because the effect of the Court of Appeals instructions on remand (Statement of the Case, *supra*, 18-19) may be interpreted to put the emphasis on assignment and transportation of students for racial and ethnic mixing regardless of where the students reside, Brinegar Petitioners ask this Court to acknowledge and instruct the lower courts that consideration of the effect of a desegregation plan upon actions of other agencies, particularly those which tend to encourage naturally integrated areas, is not only entirely proper but is necessary when determining the limits beyond which the courts cannot go in formulating a desegregation remedy. *Swann, supra*, 402 U.S. at 28, 91 S.Ct. at 1282.

CONCLUSION

This Court is requested by these Petitioners either (i) based on the opinions below, the findings of the District Court and the uncontroverted facts in the record before it, to determine that the DISD is now a unitary system, or (ii) to remand this case with instructions to the District Court to determine if in fact vestiges or elements of a state-imposed dual system remain in the DISD with respect to student assignment, with the further instruction that the

existence of one-race schools is not in itself a vestige of such a dual system, unless resulting from the intended actions of the DISD. Further, if remand is ordered, this Court is respectfully petitioned to instruct the lower courts that in formulating a school desegregation plan, the plan must be designed to remedy the specific unconstitutional wrong and no more, that a guiding principle in such a plan should be to continue, preserve and encourage integration of neighborhoods through residential patterns, but in any event, to not interfere with them, and in this connection to consider and make findings as to the effects such plans have on actions of other governmental agencies, particularly those which have the effect of encouraging, preserving and continuing integration through neighborhood housing patterns.

Respectfully submitted,

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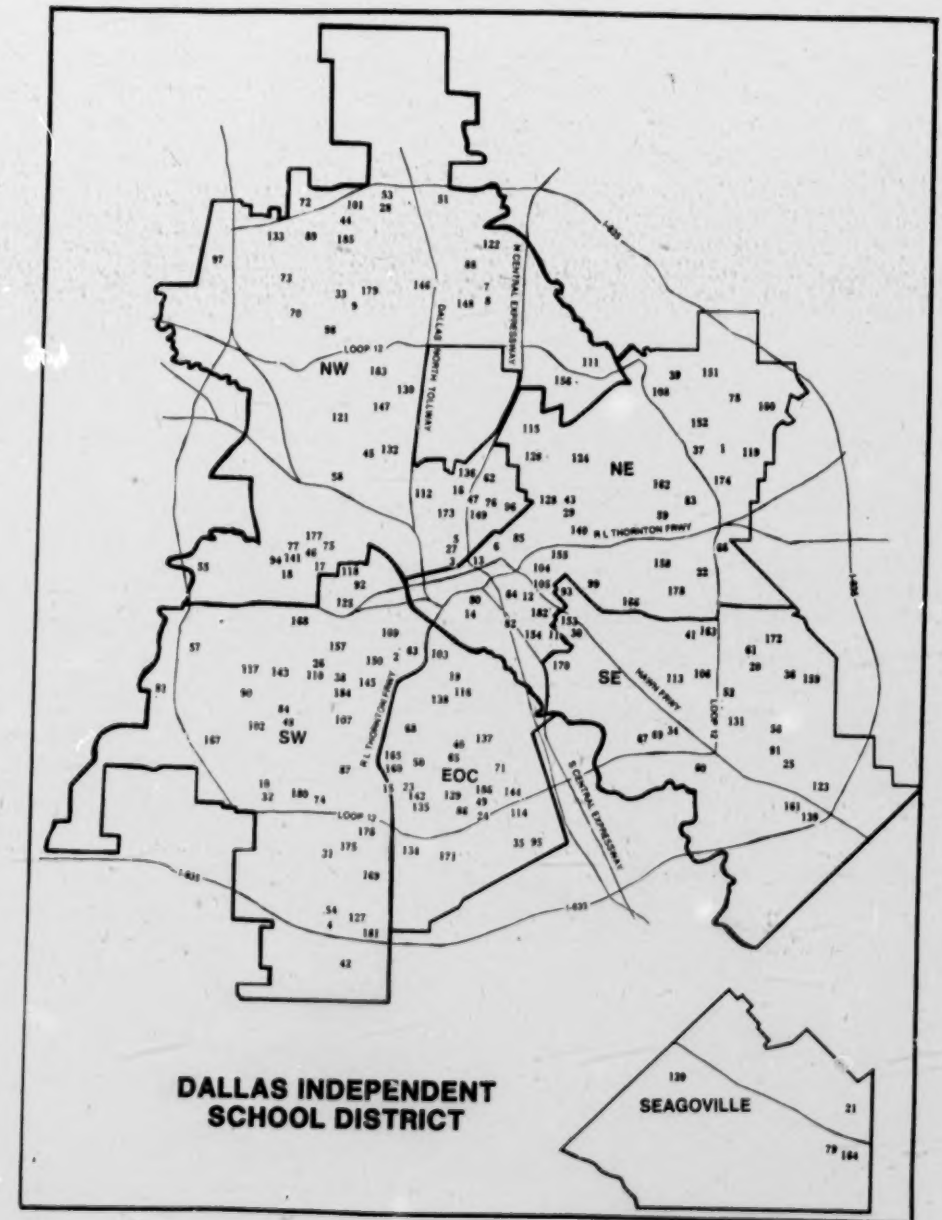
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APPENDIX "A"



IN THE
Supreme Court of the United States

October Term, 1979

No. 78-253

NOLAN ESTES, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.

No. 78-282

DONALD E. CURRY, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.

No. 78-283

RALPH F. BRINEGAR, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.,

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Supreme Court of the United States
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IN THE
Supreme Court of the United States

October Term, 1979

No. 78-253

NOLAN ESTES, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.

No. 78-282

DONALD E. CURRY, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.

No. 78-283

RALPH F. BRINEGAR, et al., *Petitioners*,

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., et al.,

**BRIEF FOR EDDIE MITCHELL TASBY,
ET AL., RESPONDENTS**

OPINIONS BELOW

I. The principal opinions and orders in this case are as follows:

1. Memorandum Order denying preliminary injunction on school construction filed December 15, 1970, unreported.

2. Order of Court of Appeals for the Fifth Circuit June 3, 1971, vacating order as to school construction, *Tasby v. Estes*, 444 F.2d 124 (5th Cir. 1971).

3. Memorandum Opinion filed July 16, 1971 on violation issue, *Tasby v. Estes*, 342 F.Supp. 945 (N.D. Tex. 1971).

4. Judgment entered August 2, 1971, unreported.

5. Supplemental Order for Partial Stay of Judgment, filed August 9, 1971, reported at 342 F.Supp. 949.

6. Memorandum Opinion on Final Desegregation Order, filed August 17, 1971, reported at 342 F. Supp. 949.

7. Supplemental Opinion regarding Partial Stay of Desegregation Order, filed August 17, 1971, reported at 342 F. Supp. 955.

8. Opinion of court of appeals filed July 23, 1975, *Tasby v. Estes*, 517 F.2d 92 (5th Cir.), cert. denied 423 U.S. 939 (1975).

9. Memorandum Opinion and Order denying interdistrict relief, filed December 11, 1975, *Tasby v. Estes*, 412 F.Supp. 1185 (N.D. Tex. 1975).

10. Opinion and Order on school desegregation plans filed March 10, 1976, *Tasby v. Estes*, 412 F.Supp. 1192 (N.D. Tex. 1976).

11. Supplemental Opinion and Final Order on desegregation plan filed April 7, 1976, reported in part at 412 F.Supp. 1210. (N.B: The reported opinion omits the important appendices to the Final Order which detail the court-ordered plan. This portion is reprinted in the Appendix to the Petition for Certiorari in No. 78-253 at pp. 84a-125a; and see corrections at 127a-129a.)

12. Memorandum Opinion granting plaintiffs attorneys fees, filed July 20, 1976, *Tasby v. Estes*, 416 F.Supp. 644 (N.D. Tex. 1976).

13. Opinion of Court of Appeals for the Fifth Circuit filed April 21, 1978, *Tasby v. Estes*, 572 F.2d 1010 (5th Cir.), rehearing denied 575 F.2d 300 (1978).

II. The reported opinions in a prior desegregation case against the Dallas Independent School District which was litigated from 1955 to 1965 are as follows:

1. *Bell v. Rippy*, 133 F.Supp. 811 (N.D. Tex. 1955).

2. *Brown v. Rippy*, 233 F.2d 796 (5th Cir. 1956), cert. denied 352 U.S. 878 (1956).

3. *Bell v. Rippy*, 146 F Supp. 485 (N.D. Tex. 1956).
4. *Borders v. Rippy*, 247 F.2d 268 (5th Cir. 1957).
5. *Rippy v. Borders*, 250 F.2d 690 (5th Cir. 1957).
6. *Boson v. Rippy*, 275 F.2d 850 (5th Cir. 1960).
7. *Borders v. Rippy*, 184 F.Supp. 402 (N.D. Tex. 1960).
8. *Borders v. Rippy*, 188 F.Supp. 231 (N.D. Tex. 1960).
9. *Boson v. Rippy*, 285 F.2d 43 (5th Cir. 1960).
10. *Borders v. Rippy*, 195 F. Supp. 732 (N.D. Tex. 1961).
11. *Britton v. Folsom*, 348 F.2d 158 (5th Cir. 1965).
12. *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965).

JURISDICTION

The jurisdictional requisites are adequately set forth in the briefs for petitioners.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are adequately set forth in petitioners' briefs.

QUESTIONS PRESENTED

1. Respondents Tasby et al., the original plaintiffs, believe that the question presented herein is as follows:

Whether the court of appeals properly remanded the case for a new pupil assignment plan and for further findings where:

a. The district court ordered the desegregation of a *de jure* segregated school system under a plan which has resulted in three-fifths of Dallas' Black pupils still attending virtually all-Black schools, and

b. The court-ordered plan leaves the primary grades (1-3) and high school grades (9-12) largely segregated by failing to attempt techniques of rezoning, pairing or transportation to achieve effective desegregation of those grades although such methods are used in Grades 4-8, and

c. The plan carves out a segregated "subdistrict" within the school system in the all-Black East Oak Cliff section of Dallas thus leaving all grades segregated in this area, and

d. The district court failed to make appropriate findings under *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26 (1971) and *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, 37, (1971) to demonstrate that it had achieved "the greatest possible degree of actual desegregation, taking into account the practicalities of the situation"

or that remaining one-race schools are "not the result of present or past discriminatory action" on the part of the school district.

2. The Brinegar group of petitioners and the Curry group of petitioners, intervenors below, have stated other questions including:

a. Whether the district court's 1971 finding of a constitutional violation, which the School District never appealed, was correct.

b. Whether certain all-White or integrated neighborhoods, e.g., North Dallas and East Dallas, should be exempted from the desegregation plan.

STATEMENT

I. Introduction and Summary of Proceedings.

This suit was commenced October 6, 1970, by respondents Tasby, et al., a group of Black and Mexican-American parents on behalf of 20 children attending pupil schools in the Dallas Independent School District (DISD), seeking an injunction requiring a comprehensive plan for the desegregation of the district. The complaint alleged that the DISD operated for years under a "*de jure* segregated attendance plan", that the current operation "basically continued the *de jure* segregation of its schools", and the defendants have "perpetuated the effects of the *de jure* tri-system and have not carried out their duty to dis-

mantle the segregated school system 'root and branch' ". Complaint p. 6. The complaint alleged that the district's practices violated the Fourteenth Amendment and the civil rights statutes¹ and invoked the civil rights and federal question jurisdiction of the United States District Court for the Northern District of Texas.²

The DISD had been sued in a prior case brought in 1955 to desegregate the district. See Opinions Below Part II, *supra*. That case ended with a 1965 order requiring a desegregation plan based on attendance area pupil assignments which was to be effective in all grade levels by September 1967.³ The prior litigation is briefly summarized in the Fifth Circuit's 1975 decision in this case. *Tasby v. Estes*, 517 F.2d 92, 95 (5th Cir. 1975). It required seven appeals to the Fifth Circuit for the plaintiffs in that case to obtain an order for a stair-step plan to eliminate segregation under an overt dual system. The opinions in the case by the late District Judge T. Whitfield Davidson are remarkable for their frank espousal of a philosophy of white supremacy and "racial purity" and their praise of slavery. See e.g., *Borders v. Rippey*, 184 F.Supp. 402, 405-409, 415-416 (N.D. Tex. 1960); *Borders v.*

¹ The complaint also invoked the Thirteenth Amendment and 42 U.S.C. sections 1981, 1983 and 2000d.

² Jurisdiction was alleged under 28 U.S.C. §§1331, 1343(3) and (4); 42 U.S.C. §§1981, 1983, 1988, 2000c-8 and 2000d. See Complaint p. 1 and First Amended Complaint.

³ There were no proceedings in the case following the 1965 Order. See discussion, *infra* pp. 12-13.

Rippy, 188 F.S. pp. 231 (N.D. Tex. 1960); *Borders v. Rippy*, 195 F.Supp. 732 (N.D. Tex. 1961).

When the *Tasby* case was filed the DISD initially defended on the ground that it was in compliance with the constitutional requirements by virtue of having obeyed Judge Davidson's 1965 order. After a trial limited to the issue of whether or not the DISD was in compliance the district court on July 16, 1971 issued an opinion finding that extensive segregation of Black and White students continued and that "elements of a dual system still remain". 342 F.Supp. at 947. This finding of violation has never been appealed by the DISD which did file an appeal on remedy issues. It was challenged on appeal by the Curry intervenors, a group of White parents from North Dallas, who were granted leave to intervene on July 22, 1971, after the completion of the trial on the violation issue and the filing of the court's opinion. The DISD has, however, sought to minimize the extent of the violation which existed and the extent of the trial court's findings. A more detailed description of the evidence and findings on the violation is set forth in part II of this statement below.

After finding a constitutional violation the district court heard evidence on desegregation plans proposed by the plaintiffs and defendants. The plaintiffs offered a plan prepared by a team of experts from the Texas Educational Desegregation Technical Assistance Center (TEDTAC). This plan would have desegregated every school in the District by rezoning secondary

schools, and by pairing and grouping attendance zones at the elementary level. On August 2, 1971 the court ordered a limited desegregation plan. The Order provided for only *televised integration* at the elementary school level, approving the DISD's elaborate ten million dollar proposal for Black and White children to participate in simultaneous instruction by two-way television connections between their segregated schools for a few hours each week. The plan also provided for one weekly visit or joint activity of Black and White pupils. The television plan was promptly stayed by the Fifth Circuit at the request of the plaintiffs and was never implemented. At the secondary level, the district judge ordered some busing of Black students to formerly White schools in certain neighborhoods located closest to the Black ghetto in South Dallas. Initially in the August 2nd order the district court ordered a more extensive high school desegregation plan with a pairing arrangement. But following "a public furor"—to use the Fifth Circuit's phrase (517 F.2d at 100)—the district court on August 9, 1971 stayed the high school plan on its own motion. That high school plan was subsequently abandoned by the district court in favor of a DISD proposal involving the satelliting of a small number of Black pupils to formerly White schools and the zoning of small numbers of Whites into all-Black schools.

Cross appeals by the parties were orally argued in the Fifth Circuit on December 2, 1971, but the case was not decided by that court until July 23, 1975,

about 4 years after the district court's judgment. Thus at the elementary school level there was no desegregation except that obtained under Judge Davidson's 1965 order. Desegregation in secondary grades was quite limited and in accordance with the DISD's own proposal.

On July 23, 1975 the Fifth Circuit reversed the judgment insofar as it approved the desegregation plan, and ordered the formulation of a new student assignment plan. 517 F.2d 92. The court found the television plan insufficient because it "does not attempt to alter the racial characteristics of the DISD's elementary schools". 517 F.2d at 104. The appellate court rejected the high school plan because it found that the DISD had attempted only the limited objective of reducing the proportionate share of any racial group's population in a high school to a point just below the 90% mark so that the school would not be categorized as a "one race" school. The court of appeals rejected the idea that the 90% mark was a "magic level" of compliance and said the plan fell short of "a *bona fide* effort to comply with the mandates of the Supreme Court". 517 F.2d at 104. The Fifth Circuit rejected the Curry intervenors' argument that their North Dallas area should be insulated from the plan because it was a newly developed community. 517 F.2d at 108.

On remand, the district court considered six desegregation plans presented by the parties and amici. Four of the six plans included detailed pupil assign-

ment arrangements and projections. They differed considerably in the extent of desegregation proposed. Plaintiffs' expert witness Dr. Willie compared the DISD plan with the plaintiffs' two plans, and a plan designed by Dr. Josiah Hall, the court appointed expert. Using a rule of thumb that labeled schools still segregated if their Anglo or minority populations exceeded 70%, Dr. Willie's comparison of the four plans was as follows:

	DISD	Dr. Hall	Pl's Plan A	Pl's Plan B
Segregated Elementary	98	69	2	23
Segregated Junior Highs	13	8	0	4
Segregated Senior Highs	<u>11</u>	<u>5</u>	<u>1</u>	<u>1</u>
	122	82	3	28

Plaintiffs' Exhibit 14.

The plans filed by the Dallas NAACP and by the Educational Task Force of the Dallas Alliance contained general outlines of pupil assignment patterns. The NAACP plan contemplated that all schools would more or less reflect the district wide Anglo-minority ratio with a 10% variance up or down. The Dallas Alliance plan provided the concepts which the court eventually adopted. The proposal left the assignments in the lowest grades (K-3) and the high school grades (9-12) virtually unchanged. Desegregation at those levels was limited to voluntary transfers. The concept provided for a desegregated pattern in grades 4-6 in

one set of schools and 7-8 in other schools using transportation and satellite zoning. The plan created an all-Black subdistrict in the East Oak Cliff section in which there would be no desegregated schools.

The court approved the Dallas Alliance concept and ordered the DISD to plan the assignment details, which were eventually incorporated in the Final Order entered April 7, 1976. The plan left over 27,000 pupils in 26 all-Black schools in the East Oak Cliff subdistrict, plus more than 40 one-race schools in the other subdistricts. See Appendix A to Final Order; Pet. App. No. 78-253, 84a *et seq.* On April 21, 1978 the Fifth Circuit in a unanimous opinion by Judge Tjoflat, joined by Judges Coleman and Fay remanded the case for a new plan and further findings. 572 F.2d 1010. The court found that a large number of one-race schools remained and that there had been no findings as to the feasibility of achieving more integration by using the desegregation techniques approved in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). The Fifth Circuit was particularly critical of the plan's failure to further desegregate the high schools, because the pupils in grades 4-8 in some areas were integrated in those grades and then segregated again in grades 9-12. The court ordered evaluation of the feasibility of applying the techniques which desegregated grades 4-8 to grades 9-12 in the same areas. 572 F.2d at 1014-1015.

As matters now stand Dallas high schools are still operated on substantially the same basis ordered by

Judge Davidson in 1965, except for limited changes made by the DISD plan in 1971. The high school plan which the Fifth Circuit rejected in the first appeal was not substantially improved on remand and was accordingly rejected again on the second appeal. Generally speaking, pupils in grades K-3 are also still assigned on the basis of the "neighborhood" zones developed by the Board under the 1965 court order.

II. The 1971 Proceedings on the Issue of the Constitutional Violation.

The Texas Constitution and statutes required school segregation in Dallas both before and after *Brown v. Board of Education*, 347 U.S. 483 (1954). Texas Constitution Art. 7, §7 (1876) (repealed Aug. 5, 1969). See *Bell v. Rippey*, 146 F.Supp. 485, 487 (N.D. Tex. 1956); *Borders v. Rippey*, 247 F.2d 268, 272, note 1 (5th Cir. 1957). See also *Tasby v. Estes*, 412 F.Supp. 1185, 1189 (N.D. Tex. 1975). The array of Texas school segregation laws listed below was not repealed until 1969, fifteen years after *Brown, supra*.⁴

⁴ Texas statutes mandating school segregation enacted in 1905, 1911, 1915, 1923 and 1957 were repealed in 1969:

1. Tex. Rev. Civ. Stat. Ann., art. 2691 (Vernon 1965) enacted in 1905, provided for separate teachers' meetings for white and colored teachers. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

2. Tex. Rev. Civ. Stat. Ann., art. 2695 (Vernon 1965) enacted in 1905, provided for consolidation of small school districts by race. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

Desegregation of the Dallas public schools finally began at the first grade level in September 1961 (1971

3. Tex. Rev. Civ. Stat. Ann., art. 2719 (Vernon 1965) enacted in 1923, provided for a free public segregated school system. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

4. Tex. Rev. Civ. Stat. Ann., art. 2755 (Vernon 1965) enacted in 1905, provided that schools constructed with any funds voluntarily given by one race for a school for that race could not be used by another race without the consent of the district trustees. Repealed by Acts of 1969, 61st Leg., p. 3024, ch. 889 § 2, effective Sept. 1, 1969.

5. Tex. Rev. Civ. Stat. Ann., art. 2816 (Vernon 1965) enacted in 1905, provided for taking the school census by "color" of the parent or guardian of the child. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

6. Tex. Rev. Civ. Stat. Ann., art. 2817 (Vernon 1965), enacted in 1905, provided for the separation of school census forms by race. Repealed by Acts 1969, 61st Leg., p. 179, ch. 75, §4, effective Sept. 1, 1969; Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

7. Tex. Rev. Civ. Stat. Ann., art. 2819 (Vernon 1965) enacted in 1911, provided that the county superintendent make separate census rolls by race. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

8. Tex. Rev. Civ. Stat. Ann., art. 2893 (Vernon 1965) enacted in 1915, provided that any child who lived more than two and one-half miles from a public school for children of his same race was not required to attend school. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

9. Tex. Rev. Civ. Stat. Ann., art. 2900 (Vernon 1965) enacted in 1905, provided that no child could attend a public school supported by public funds for another race. Repealed by Acts 1969, 61st Leg., p. 361, ch 129, § 1, effective Sept. 1, 1969; Acts 1969, 61st Leg., p. 3024, ch. 889 § 2, effective Sept. 1, 1969.

Tr. 436),⁵ when the Fifth Circuit reversed one of Judge Davidson's orders which endorsed a three-way system of white, black and integrated schools. The Fifth Circuit approved the DISD's proposal for a grade-a-year desegregation plan.⁶ Superintendent Estes testified that the DISD converted from a dual set of school zones for Black and White pupils to single zones on a grade-a-year basis until 1965 when the schedule was accelerated to include all six elementary grades and Grade 12. 1971 Tr. 435-436; 1971 Defendants Exhibit 4.⁷ The DISD eliminated the dual zones for Junior

10. Tex. Rev. Civ. Stat. Ann., art. 2900a (Vernon 1965) enacted in 1957, provided that dual public school systems could not be abolished except by election of the voters in the school district, that school districts which maintained integrated schools for the 1956-57 school year be permitted to continue unless abolished, and that school districts and persons violating these provisions be subjected to penalty. Repealed by Acts 1969, 61st Leg., p. 1669, ch. 532, § 2, effective June 10, 1969; Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

11. Tex. Rev. Civ. Stat. Ann., art. 3901a (Vernon 1965) enacted in 1957, provided, *inter alia*, that no child should be compelled to attend school with children of another race. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, effective Sept. 1, 1969.

⁵ The 5 volume transcript of the 1971 hearings is cited herein as "1971 Tr.". Volumes 1 and 2, pages 1-663 contain the hearing on the violation question. Volumes 3-5, pages 664-1435 are the 1971 remedy hearing.

⁶ *Boson v. Rippy*, 285 F.2d 43 (5th Cir. 1960). The Fifth Circuit did not approve the 12 year delay but remanded for further proceedings on the timing. 285 F.2d at 47. See *Borders v. Rippy*, 195 F.Supp. 732 (N.D. Tex. 1961).

⁷ The acceleration of the plan was the result of two more appeals by plaintiffs. In September 1964 Judge Davidson denied

High schools in 1966 and for the final two grades (10 and 11) in September 1967. 1971 Tr. 437. The 1965 resolution gave the Superintendent complete discretion to "prepare rules and regulations and establish the boundaries of districts, in order to implement and carry out the purpose and intent of this Resolution." Def. 1971 Exhibit 4. The resolution provided that schools "shall be racially desegregated" and that "single attendance districts shall be established" at the various grade levels, and it provided for transfers without regard to race. *Ibid.* The resolution and court order contained no other details about the manner in which desegregation was to be accomplished. Thus the 1965 court orders did not prescribe the manner of desegregation beyond specifying the grades to be in-

plaintiffs' motion to accelerate the 12 year plan. While plaintiffs' appeal was pending the Fifth Circuit held in other cases that 12 year plans could no longer pass muster. *Lockett v. Board of Education of Muscogee County*, 342 F.2d 225 (5th Cir. 1965) (February 24, 1965); *Bivins v. Board of Public Ed.*, 342 F.2d 229 (5th Cir. 1965) (February 25, 1965); *Singleton v. Jackson Mun. Sep. School Dist.*, 348 F.2d 729 (5th Cir. 1965) (June 22, 1965). The day after *Singleton*, *supra*, the DISD passed a resolution to establish single attendance zones for all elementary schools in September 1965, for Junior High schools in 1966, and for High Schools in 1967. See this resolution in the Tasby record as 1971-Defendants Exhibit 1. When the Fifth Circuit was advised of the resolution it vacated and remanded relying on the board's good faith. *Britton v. Folsom*, 348 F.2d 158 (5th Cir. 1965). It also ordered the desegregation of grade 12, but despite that clear direction Judge Davidson refused to order grade 12 desegregated and plaintiffs appealed again. On September 1, 1965, the Fifth Circuit again ruled that grade 12 must be desegregated immediately. *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965). See 1971 Defendants Exhibits 2, 3, and 4.

cluded, and there was no review of the DISD's compliance or other proceeding in that case after 1965.

Superintendent Estes testified that attendance areas were designated on the basis of such criteria as building capacities, distance to schools, geographical barriers, traffic arteries, projected enrollment and continuity in curriculum. 1971 Tr. 590-592. He stated that "We have not considered race in the construction of attendance zones in this district." 1971 Tr. 527; see also 589.

The earliest year for which school-by-school racial enrollment data is available in the record is 1966-67.⁸ Racial segregation was very evident at that time. In 1966-67 there were 33 90-100% Black schools. Three-fourths of all Black pupils (33,850 out of 43,816 or 77.26%) attended these 33 virtually all-Black schools in 1966-67. There were 114 schools which had less

⁸ The 1966-67 figures are on the last two pages of Appendix 4 of the DISD answers to plaintiffs' first set of interrogatories. The answers were admitted into evidence at 1971 Tr. 6-11. The Board answered that it did not have racial enrollment data available for earlier years. Before and during the trial Judge Taylor declined to require the Board to answer plaintiffs' interrogatories seeking racial enrollment data, school assignment maps and other materials for years prior to 1965. See Transcript of hearing on discovery matters June 8, 1971, pp. 1-15; see also 1971 Tr. 660. In so ruling Judge Taylor said "... I want to know what the situation is now, in the light of the development on the law and what the School District is doing now, and has done since '65. I don't think it's necessary to—if you want me to, I will say that it's pretty obvious to the Court that there must have been *de jure* segregation or segregation prior to the Court order of '65." June 8, 1971, Tr. 15.

than 10% Black pupils and enrolled nine-tenths of the Anglos and Hispanics (107,173 out of 118,079 or 90.76%). The 1966-67 enrollment data is summarized below in a table which shows the number of schools and pupils in each percentage range. Anglos, Hispanics and "others" are combined in the Board's figures for 1966-67. The table indicates the racial separation of Black pupils during 1966-67:

Percentage of Anglo, Hispanic & Other Students	No. of Schools	1966-67 Anglo, Hispanic & Other Students		Black Students	
		No.	%	No.	%
90-100	114	107,173	90.76	560	1.28
80-89	6	3,882	3.29	770	1.76
70-79	5	2,386	2.02	856	1.95
60-69	4	1,528	1.29	789	1.8
50-59	1	447	.38	442	1.01
40-49	1	278	.24	302	.69
30-39	2	547	.46	1,095	2.5
20-29	1	404	.34	1,045	2.38
10-19	4	832	.71	4,107	9.37
1-9	10	578	.49	11,241	25.66
Less than 1%	23	24	.02	22,609	51.6
<hr/>					
Total	171	118,079	100	43,816	100
% of Total		72.94		27.06	

Source: This table was derived from the data in defendants' Answers to Interrogatories (first set) Appendix 4 (last two pages).

It is possible to identify the names of the all-Black schools in Dallas in the early 1960's despite the absence of detailed enrollment data, because faculties were segregated and the all-Black faculties are in the record.⁹ The faculty figures identify 37 all-Black schools in the pre-1965 period. There were 28 all-Black faculties in 1960-61, three new schools were opened in the early 1960's with Black faculties, and the DISD converted six all-White faculties to all-Black in the 1962-64 period.¹⁰

⁹ Defendants' Answers to Interrogatories (first set), No. 1(d).

¹⁰ Twenty-eight schools with all-Black faculties in 1960-61 were: Lincoln H.S., Madison H.S., B.T. Washington H.S., Sequoyah Jr. H.S., Arlington Park, J.H. Brown, Carr, Carver, Colonial, Darrell, Douglass, Dunbar, Crispus Attucks, Eagle Ford (Black), Ervin, Frazier, Harlee, Harris, Hassell, Johnston, Polk, Ray, Rice, Roberts, Thompson, Tyler, Wheatley, and Starks. Three schools opened in the period with all-Black faculties were Ervin Jr. H.S., Pinkston H.S., Roosevelt H.S. Six schools converted from all-White to all-Black faculties were Holmes Jr. H.S., Zumwalt Jr. H.S., Pease, Stone, Miller, and Mills. Answers to Interrogatory 1(d).

The conversions from all-White to all-Black faculties were:

Schools	Years	White Teachers	Black Teachers
Holmes	1963-64	26	0
	1964-65	0	50
Zumwalt	1964-65	42	0
	1965-66	0	33
Pease	1963-64	12	0
	1964-65	0	24
Stone	1963-64	17	0
	1964-65	0	17
Miller	1962-63	20	0
	1963-64	0	26
Mills	1961-62	15	0
	1962-63	0	24
Ibid.			

During the period from 1965 to the trial in 1971 the DISD built at least 15 schools which were either all-White or all-minority by the time of the trial, and five others were opened as such shortly thereafter.¹¹ Respondents Tasby et al. and the NAACP took four appeals to the Fifth Circuit complaining of the district court's refusal to enjoin the DISD from building a series of new one-race schools. Dr. Estes testified "The policy of the District has been during the pre-Swan/n/ era not to consider race in the construction of school facilities." 1971 Tr. 527-28. The Fifth Circuit twice remanded and held in 1975 that the district court had erred in not granting plaintiffs some relief against the continued building of new one-race schools. *Tasby v. Estes*, 444 F.2d 124 (5th Cir. 1971); *Tasby v. Estes*, 517 F.2d 92, 104-106, 110 (5th Cir. 1975). In 1978 the Fifth Circuit approved a site acquisition complained of by the NAACP, but ordered the district to study the feasibility of sending White pupils to the school which had been planned as another all-Black facility. *Tasby v. Estes*, 572 F.2d 1010,

¹¹ All-White schools opened between 1965 and the trial were Carter, Skyline, Hulcey, Alexander, Cochran, Conner, Gooch, Nathan Adams, Rowe, Runyon, Turner. Minority schools were Arlington Park, Darrell, Marshall, Edison, Seguin, Tyler, Navarro, Jackson and Young. Pl. 1971 Exhibit 3; 1971 Tr. 494-500. Another fourteen one-race facilities benefited from construction additions between 1965 and 1971. Of further note is the fact that the five new facilities opened post-1971 were the subject of objection by plaintiffs prior to their completion. Despite plaintiffs' unsuccessful attempts to enjoin this construction the DISD opened each as a one-race facility.

1016-1018 (5th Cir. 1978). Nevertheless, since the 1978 Fifth Circuit decision, the 1979 DISD report to the court shows that two new virtually all-Black high schools have been opened in the disputed shopping center, e.g., A. Maceo Smith High School 97.64% Black and East Oak Cliff Alternative School 99.21% Black.

The DISD did not adopt a racial majority-to-minority transfer plan until the eve of the 1971 liability trial, and it was not announced until the trial. 1971 Tr. 560-563, 645-647. Prior to the 1971 trial pupils were required to remain in their attendance area schools and there was no "freedom of transfers" policy except for certain transfers for "curriculum enrichment". 1971 Tr. 561.

Despite the 1965 order, pupil segregation was still extensive in 1970-71 the year this suit was filed. In that year there were about 181 schools enrolling 165,694 pupils who were 94,354 Anglos (56.94%), 56,621 Blacks (34.17%), 13,948 Mexican Americans (8.42%) and 771 Asians, American Indians and others (.47%). A full nine-tenths of the Black students attended 48 schools which were less than 10% White; sixty-three percent of them were in 36 schools which had less than 1 percent Anglo pupils. More than two-thirds of the Anglos were concentrated in 69 over 90% Anglo schools. The following table gives a detailed analysis of the 1970-71 enrollments and depicts the great extent of segregation:

1970 - 71

Percentage Of White Students	No. of Schools	White Students No.	Black Students No.	Hispanic Students No.	Other Students No.
90-100	69	64,995	242	1,991	253
80-89	21	16,466	516	2,051	179
70-79	15	6,555	442	1,439	93
60-69	8	2,252	218	976	82
50-59	1	215	107	40	2
40-49	7	1,609	529	1,365	58
30-39	1	79	9	144	6
20-29	5	983	1,181	1,657	25
10-19	6	650	2,416	1,552	28
1-9	12	439	14,859	1,696	34
Less than 1%	36	111	36,102	1,037	11
TOTAL	181	94,354	56,621	13,948	771
% Of Total		56.94	34.17	8.42	.47

Source: This table was derived from the data in Defendants' Answers to Interrogatories (First Set) Appendix 1. (See also Plaintiffs' 1971 Exhibits 1, 2.)

The net effect of the board's policies between 1965 and 1970 was to increase the extent of segregation of Black pupils during the years when desegregation was supposedly being implemented. The 1972 Mondale Committee Report found that the percentage of Dallas Blacks in 90-100% Black schools was 82.6% in 1965, 87.6% in 1968 and 91.4% in 1971.¹²

In 1970-71 the DISD had 7,293 teachers: 1,856 were Black, 73 were Chicano and 5,364 were Anglo. Plaintiffs' 1971 Exhibit 4. Plaintiffs established at the 1971 trial that there had been relatively little progress in faculty desegregation in the DISD. Plaintiffs' 1971 Exhibit 4 listed the many one-race schools with virtually one-race faculties. This exhibit established that of 1,865 Black teachers in the DISD, 1,694 or 88.8% taught in schools with 90% or greater racial minority students, and only 88 Black teachers or 4.7% were in schools with 90% or greater white enrollments.¹³ Su-

¹² Report of the Select Committee on Equal Educational Opportunity, 92nd Cong., 2d Sess. Senate Report No. 92-100; December 31, 1972, Table 7-16, p. 117. The 1968 and 1971 figures in the Senate Report are consistent with exhibits in the record. (See Defendants' Answers to Interrogatories (first set) Appendices 1 and 3). The record does not contain racial enrollment data by school for 1965. (See note 8, *supra*).

¹³ We have now subjected the student and faculty enrollment figures in the Defendants' Answers to Interrogatories, first set, to a more detailed analysis and calculated the correlation between the percentages of black students and teachers in each school in the system in 1970-71. The calculations yield a coefficient of correlation (r) of .91, and a coefficient of determination (r^2) of .83. The coefficient of determination indicates that the racial composition of the students accounts for or is associated

perintendent Estes testified that in 1968-69 the DISD began a phased faculty desegregation program, by assigning more than one ethnic group to the faculties of 20 of the 182 schools. 1971 Tr. 455. In 1969-70 the system had "over forty" faculties "with more than one ethnic group represented". *Id.* at 455. In 1970-71 Dr. Estes said "we had all of our twenty-one high schools, twenty-three junior highs, and over sixty percent of our elementary schools that had more than one ethnic group represented on their faculty." *Id.* at 455-456. After the start of the 1971 trial the DISD announced for the first time its plan to desegregate the faculties of all schools in accordance with the Fifth Circuit's *Singleton* decision. 1971 Tr. 456, 647-652. See *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969). Dr. Estes also indicated an awareness of this Court's *Montgomery* decision on faculty desegregation (1971 Tr. 650) (*United States v. Montgomery County Board of Ed.*, 395 U.S. 225 (1969)), but said that the Board had not decided to adopt a *Singleton* plan until after the *Swann* decision. 1971 Tr. 651. Of course, this Court's first faculty desegregation decisions had been made six years earlier. *Bradley v. School Board*, 382 U.S. 103 (1965); *Rogers v. Paul*, 382 U.S. 198 (1965).

Dr. Estes testified that 19 schools had changed from White to predominantly Black between 1965 and

with about 83% of the variation in faculty racial compositions. See J. Freund, *Modern Elementary Statistics* 421-22 (4th ed. 1973).

the 1971 trial, and that these changes were due to changing neighborhood racial patterns, primarily in the South Oak Cliff area of Dallas during these years. 1971 Tr. 514-422. Dr. Estes said that 1 High School, 3 Junior High schools and 15 elementary schools changed from White to Black during the 1965-1971 period.¹⁴ The district court stated in its opinion on the violation issue that "[t]he School Board has asserted that some of the all Black schools have come about as a result of changes in the neighborhood patterns but this fails to account for the many others that remain as segregated schools." *Tasby v. Estes*, 342 F.Supp. 945, 947 (N.D. Tex. 1971).

The validity of the court's finding is easily demonstrated by observing that 31 schools which had all-Black faculties in the early 1960's had 90% or more Black pupils at the time of the 1971 trial.¹⁵ Indeed in 1979, 30 of the pre-1965 all-Black schools remain over

¹⁴ The schools named by Dr. Estes were South Oak Cliff High, Holmes Jr. High, Boude Storey Jr. High, Zumwalt Jr. High, and Pease, Bushman, Stone, Bryan, Lisbon, Thornton, Budd, Russell, Oliver, Marsalis, Earhart, Juarez, Lanier, City Park, and Roberts elementary schools. (At one point Dr. Estes said there were 16 such schools but only 15 elementary schools were named). 1971 Tr. 514-522.

¹⁵ Of the 37 pre-1965 all-Black schools which we have been able to identify by their faculties in note 10 *supra*, 31 of them had over 90% Black pupils in 1970-71, 3 were between 82 and 98% Black and Mexican-American combined, and 3 were no longer open. Compare Answers to Interrogatories (first set), Answer to Int. 1(d) with Appendix 1 of the same answers.

90% Black.¹⁶ Similarly, if one compares the list of all-Black schools in 1966-67 with the current list of all-Black schools in the Board's April 1979 report to the district court, it is evident that most of the 1966 Black schools have not been desegregated. Twenty-eight schools which were virtually all-Black in 1966-67 are still all-Black in 1979; the 28 schools listed in the note below were 90 to 100% Black in both 1966 and 1979.¹⁷ There were five other all-Black schools in

¹⁶ Compare list of schools in note 10, *supra* from Board's Answer to Interrogatory 1(d) with April 15, 1979 report by DISD to the District Court. Of the 36 schools listed in note 10, *supra* all are 90% or more Black in 1979 with the following exceptions: Polk—83.05% Black, Sequoyah—47.65% Black, B.T. Washington (now Arts Magnet school)—47.65% Black. The remaining exceptions are schools which have been closed since 1965, e.g., Attucks, Eagle Ford (Black) and Starks. Zumwalt Jr. H. building was designated under the Court-ordered plan to be used as part of the all-Black S. Oak Cliff H.S. The B.T. Washington H.S. was closed from 1969 until reopened in 1976 as the Arts Magnet high school.

¹⁷ *Schools under 10% White in 1966 and 1979:*

Less than 1% White in 1966-67

Lincoln H.S., F.D. Roosevelt H.S., James Madison, H.S., J.N. Ervin Middle School, Arlington Park Comm. Lrn. Center, John Henry Brown Elem. Sch., Colonial Elem. Sch., B.F. Darrell Comm. Lrn. Center, Paul L. Dunbar Elem. Sch., J.N. Ervin Elem. Sch., Julia C. Frazier Elem. Sch., Fannie C. Harris Elem. Sch., Thomas C. Hassell Elem. Sch., J.W. Ray Elem. Sch., Chas. Rice Elem. Sch., H.S. Thompson Elem. Sch., Priscilla L. Tyler Comm. Lrn. Center, Phyllis Wheatley Elem. Sch.

1-9% White in 1966-67

O.W. Holmes Middle Sch., J.N. Bryan Elem. Sch., C.F. Carr Elem. Sch., G.W. Carver Elem. Sch., N.W. Harllee Elem. Sch., Albert S. Johnston Elem. Sch., Roger Q. Mills Elem. Sch., Alisha

1966-67.¹⁸ Seven of the all-White schools of 1966 remain over 90% White, and another eight are 80-100% White in 1979.¹⁹

The Curry intervenors, who were allowed to intervene as defendants after the trial on the violation, argued that the desegregation remedy should not apply to their area of North Dallas because it had not been a part of the DISD at the time of the *Brown* decision. However, each of the schools in the area claimed by the Curry group was established as a one-race White school during the years of dual school

M. Pease Elem. Sch., Harry Stone Middle Sch., Sarah Zumwalt Jr. H.S. (now part of S. Oak Cliff H.S.)

¹⁸ *Schools under 10% White 1966-67 but not in 1979*

P.C. Anderson Career Academy, K.B. Polk Elem. School, Booker T. Washington Elem. Sch. now Arts Magnet school), Winnetka Elem. Sch., Joseph J. Rhoads Elem. Sch.

¹⁹ *Schools over 90% White in both 1966-67 & 1979*

W.T. White H.S., Wm. L. Cabell Elem. Sch., Tom C. Gooch Elem. Sch., Victor H. Hexter Elem. Sch., Arthur Kramer Elem. Sch., Richard Lagow Elem. Sch., Nancy Moseley Elem. Sch.

Schools over 90% White in 1966 & 80-90% White in 1979

Bryan Adams H.S., George B. Dealey Elem. Sch., Everette Lee Degolyer Elem. Sch., Chas. A. Gill Elem. Sch., Edwin J. Kiest Elem. Sch., B.H. Macon Elem. Sch., Urban Pk. Elem. Sch., Harry C. Withers Elem. Sch.

Note should be made that for elementary and middle schools, the overall school percentage for Anglo is the utilized measurement. In grades K-3 as of 1979, many more elementary schools will be 80% to over 90% Anglo.

operation. The schools all opened with all-White faculties:

<u>School</u>	<u>Year Opened</u>	<u>Faculty (year)</u>
N. Adams	1967	26 White - 1967
Cabell	1958	26 White, 1 Hisp. - 1960-61
Degolyer	1961	28 White - 1961
Gooch	1965	24 White - 1965
Marcus	1963	13 White - 1963
Withers	1961	28 White - 1961
Marsh Jr. H.S.	1962	37 White - 1962
W.T. White H.S.	1964	38 White - 1964

Answers to interrogatories (first set) 1(d).

Each of these schools had over 90% White pupils in the 1966-67 year, with the exception of Nathan Adams which opened the following year as an over 90% White school. Answers to Interrogatories (first set), Appendix 4 (last two pages). Gooch, Cabell and W.T. White H.S. remain over 90% White, and Degolyer and Withers are 80-89% White in 1979.

The district court's opinion of July 16, 1971 found that "elements of a dual system still remain", and that the DISD had been aware of, but had not complied with, Fifth Circuit decisions ordering various desegregation steps until after the case was filed.²⁰

²⁰ The court wrote at 342 F.Supp. 945, 947-948:

When it appears as it clearly does for the evidence in this case that in the Dallas Independent School District 70 schools are

The court found that there was insufficient evidence to show there had been *de jure* segregation of Mexican-Americans in Dallas, but did find that Mexican-Americans were a distinct and clearly identifiable ethnic group, and ordered that any desegregation plan must take this fact into consideration.²¹

90% or more white (Anglo), 40 schools are 90% or more Black, and 49 schools are 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

The School Board has asserted that some of the all-Black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools. The defendant School Board has also defended on the ground that it is following a 1965 Court order. This position is untenable.

The *Green* and *Alexander* cases have been handed down by the Supreme Court since the 1965 order of the Court of Appeals for the Fifth Circuit to the Dallas Independent School District. There have been too many changes in the law even in the Fifth Circuit and it is fairly obvious to me that the defendant School Board and its administration have been as aware of them as I. For example, the case of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 was handed down in December of 1969. This was the case in which the Court ordered, among other things, desegregation of faculty and other staff, majority to minority transfer policy, transportation, an order with reference to school construction and site selection, the appointment of bi-racial committees. The Dallas School Board has failed to implement any of these tools or to even suggest that it would consider such plans until long after the filing of this suit and in part after the commencement of this trial.

²¹ The finding that Mexican-Americans were an identifiable minority group was made on the basis of considerable evidence

III. The 1971 Remedy Hearing; Desegregation Proposals.

A. Plaintiffs' Proposal—the TEDTAC Plan.

At the 1971 hearing plaintiffs endorsed a desegregation plan which would have effectively desegregated the entire DISD. The plan, called the TEDTAC plan (1971 Pl's. Exhibits 122, 123, 124, and 125), was the product of several months work by a team of 8 staff members of the Texas Educational Desegregation Technical Assistance Center, University of Texas at Austin. TEDTAC had previously worked on desegregation plans for 41 other school districts. 1971 Tr. 1016. TEDTAC began working on a Dallas plan following a request from Judge Taylor in October 1970. 1971 Tr. 966. The Project Administrator, Pete Williams, met with the Superintendent and all principals, and then teams of staff members visited every school in the district and collected data. 1971 Tr. 967-970; 1029-1040. This was followed by a three month period of drawing and redrawing attendance lines to produce the final product. 1971 Tr. 969. Joe Price, the team captain, explained the plan in detail. 1971 Tr. 986-1006; 1114-1117; 1150-1168.

The TEDTAC plan would have desegregated each high school in the city by redrawing attendance lines. The high school plan is 1971 Pl.Ex. 123; the proposed

offered by plaintiffs. See 1971 Tr. pp. 102-378; testimony of Richard Medrano, Dr. George I. Sanchez, Rene Martinez, Carlos Vela, Horacio Ulibarri, and Henry Ramirez.

new zone map follows page 20. The plan used elongated zones to assign minority pupils in the central and southern parts of the district and White pupils in the northern area to the same schools. The plan proposed White enrollments in the high schools which ranged from a high of 84% to a low of 40%. The highest projected Black percentage in any high school would have been 41%. (The district-wide ratios in 1970-71 were Anglo 56.94%, Black 34.17% and Mexican-American 8.42%.)

The Junior High proposal (Pl. 1971 Ex. 124) by TEDTAC was also a rezoning plan, based upon combinations of new proposed elementary zones. Each of the junior high schools would have been desegregated with the Anglo pupils ranging from a high of 81 to a low of 31%. *Ibid.* Black student percentages ranged from 15% to 48%. The proposed zone map is at Pl. 1971 Ex. 124 following p.20.

The elementary school plan (Pl. 1971 Ex.125) desegregated as many schools as possible by pairing or grouping contiguous school zones, and grouped the remaining schools on a non-contiguous basis. 1971 Tr. 999-1003. It was the view of the TEDTAC team that non-contiguous pairing was essential if all racially identifiable schools were to be desegregated. 1971 Tr.1184. White student percentages would range from 87% to 22%, and Black percentages from zero to 50%. Pl. 1971 Ex. 125.

TEDTAC estimated the transportation required by the elementary plan as 12,500 students in contiguous

zones and 21,600 in non-contiguous zones. 1971 Tr.1115. TEDTAC Administrator Pete Williams believe that it was not necessary to plan a bus transportation program for high school pupils, because few would actually use school buses. 1971 Tr. 983-985. He said that secondary students usually provide their own transportation and tend to think of school buses as something for younger children. *Ibid.* The DISD estimated that the TEDTAC plan would make 35,000 secondary pupils and a total of 70,000 pupils eligible for busing. 1971 Tr. 1313-1314; 1324-1327.

The TEDTAC staff used scaled maps to estimate the distances pupils would be required to travel under the plan. 1971 Tr. 1155-1160. Mr. Price testified to the longest distances in each non-contiguous group or pair; the contiguous pairs were all shorter distances. He estimated the distances in the non-contiguous pairs ranged from 7 to 18 miles. 1971 Tr. 1157-1160. Plaintiffs also presented illustrative travel time studies. Twilla Young drove from Arlington Park Elementary to White High School in both directions measuring 14.8 miles and 26 minutes in one direction and 15 miles in 24 minutes in the other direction. 1971 Tr. 1287-1293. She drove from Burnett Elementary to Darrell Elementary 23.9 miles and 35 minutes one way and 22.1 miles and 32 minutes in the other direction.

When the TEDTAC plan was finally presented in court it was not advocated by TEDTAC, but was merely presented as a feasible proposal. 1971 Tr.988.

Instead TEDTAC administrator Williams advocated his invention the television plan which, as modified, was urged by the DISD and eventually ordered by the court. However Mr. Williams did testify that the TEDTAC plan advocated by plaintiffs was "educationally sound, administratively feasible, and financially plausible."²² 1971 Tr. 1185. Mr. Williams testified that in his opinion bus trips not in excess of 45 minutes one-way were acceptable, but that longer trips might interfere with the school day. 1971 Tr.1186-1187. One of his reasons for finally not advocating the plan was a fear that some of the trips might be longer than 45 minutes. 1971 Tr. 1233.²³

Mr. Bryan Vinson, operator of a private bus company which transports private school children in Dallas, testified that he transports pupils from 10 minutes to an hour, and that the average ride of these private school children in Dallas was 45 minutes. 1971 Tr.1301-1303. Superintendent Estes testified that based on his experience working at H.E.W. he knew

²² Judge Taylor noted the abuse and criticism TEDTAC received for creating the proposal: "That agency has been harassed, intimidated, pressured and abused in many other ways, and it did not deserve this type of treatment. The politicians have made their speeches, have called their office demanding names, suggesting loss of employment sometimes subtly and sometimes not so subtly. Some of the staff of TEDTAC have been obliged to unlist their phone numbers in order to escape harassing telephone calls." 342 F.Supp. at 949.

²³ Mr. Williams also said he did not recommend the TEDTAC plan because he thought the community would react badly to the idea of buying a lot of buses. 1971 Tr. 1232-1233.

that about 39% of all pupils in the country were bused to school. 1971 Tr. 951-952. The DISD's own 1971 proposal for secondary schools included a few bus trips of an estimated 30 minutes. 1971 Tr. 852.

In the Memorandum Opinion of August 17, 1971 (342 F.Supp. 949), Judge Taylor declined to order the TEDTAC plan stating:

The Court has concluded that to adopt the gerrymandering, pairing, and grouping plan submitted by Plaintiffs, accompanied by the massive crosstown bussing required to implement such a plan, would result in extensive "abrasions and dislocations" and a disruption of the educational process, and is rejected in the light of the teaching of *Allen v. Board of Public Instruction of Broward County*, 432 F2d 362 (5th Cir. 1970), to keep "such problems at a minimum".

342 F. Supp. at 950-95).

B. The DISD Plan and the Court-Ordered Plan.

The desegregation plan filed by the DISD July 23, 1971, (Def.1971 Ex.20) entitled "Confluence of Cultures" provided a student assignment plan for senior and junior high schools based upon rezoning with the use of a few satellite zones in Black neighborhoods from which pupils were bused to formerly White schools.²⁴ Supt. Estes explained the high school plan.

²⁴ In addition to the assignment plan the proposal provided for desegregation of faculty and staff, for a majority to minority

1971 Tr. 680-705. He testified the plan would eliminate every 90% or more White high school and all but one 90% or more Black high school. *Id.* at 680. The plan created three satellite zones in which Black pupils would be bused to White high schools, e.g., from the Ray school area to Hillcrest High (about 20-30 minutes) (*Id.* at 694), from Arlington Park area to White High school (350 students about 30 minutes) (*Id.* at 695) and from the Harris and Hassell areas to Bryan Adams. *Id.* at 698.

Dr. Estes explained that in drawing high school attendance zones the DISD had attempted to minimize the changes in zone lines:

Q. The student assignment in the high schools for '71-72 under the School Board's plan. Now, you said yesterday in drawing this plan you, the Board had attempted to maintain the continuity and integrity of the high school zones. Now, what does that mean?

A. That's correct.

Q. What does that mean exactly?

A. This means to maintain as nearly as possible the feeding schools associated with that particular high school so that the traditions, the customs, the localities that have been established, the articulation and coordination of the curriculum that has been developed over a period of

transfer option, for a recognition by the district of an affirmative duty to use school location and abandonment to promote integration, and for a tri-ethnic committee. Def. 1971 Ex.20.

years, the communication between department heads, between classroom teachers and among the principals can be maintained so as to enhance the possibility of continued quality education.

Q. So for these reasons you have attempted to minimize the changes in the zone lines at the high school level?

A. Yes sir, that's correct.

1971 Tr. 842; Dr. Estes cross-examination by Mr. Surratt.

The effect of the rezoning with the limited objective of reducing one-race schools to a point just slightly under the 90% level was indicated by the projections in the DISD plan of ethnic composition for the 1971-72 year. For example Black schools such as Lincoln, Pinkston, and Roosevelt were projected at 88%, 88.2%, and 86.4% minority pupils respectively in the plan, and Anglo schools had similar minimal integration.²⁵

The DISD plan's treatment of the junior high schools was similar to the high school plan. A few Black pupils were bused from satellite zones to White schools with the objective of reducing the number of 90% or more White schools from 10 to 1. The plan left four 90% or more minority schools (Edison, Holmes, Sequoyah, and Zumwalt) and another at a slightly

²⁵ For example, the DISD projections for Anglo percentages included Adams, Hillcrest, Jefferson, Kimball, Samuell, White and Wilson between 80 and 88% Anglo. Def. 1971 Ex.20.

lower level (Storey—85.2% minority). It had eleven White schools ranging from 79.4%—93.6% Anglo. 1971 Def. Ex. 20.

The secondary school plan finally ordered by the district court was basically the same as the DISD proposal just described. 517 F.2d at 100. Initially Judge Taylor rejected the plan and ordered more busing of Blacks from satellite zones and a high school pairing arrangement. Unreported Order of August 2, 1971. However a week later, after the pairing order had touched off public criticism, the district court "stayed" and ultimately abandoned this plan, stating that it was unfair and unreasonable. 342 F.Supp. at 951; see 517 F.2d at 100. The district court then obtained a secondary plan from the DISD that was virtually identical with the original plan and approved it in an *ex parte* proceeding. 517 F.2d at 100.

The DISD's television desegregation plan for elementary schools did not change the pupil assignments. The DISD's own statistical summary of its plan indicated that it would not eliminate any racially identifiable elementary schools. Indeed the number would be increased by the opening of 4 new Black schools:

ELEMENTARY SCHOOL
STATISTICAL SUMMARY
RACIALLY IDENTIFIABLE SCHOOLS

	1970-71	1971-72
Populated by student bodies		
90% or greater White	50	50
Populated by student bodies		
90% or greater Black	32	36*
Populated by student bodies		
90% or greater minority	37	41*
*Additional elementary schools for 1971-72		
Pearl C. Anderson		
James Madison		
Jose Navarro		
Erasmus Seguin		

Def. 1971 Ex. 20.

The district court ordered implementation of the television plan on a basis somewhat different from that proposed by the DISD. 342 F.Supp. at 952. The court provided for two-way audio and visual contact between the Anglo and minority classrooms, and also ordered that classes be paired for television purposes on a 2-1 Anglo-minority ratio. The board's proposal would have had only one-way video communication, and would have left 10 Black schools in Oak Cliff without even a television pairing with Anglo schools. DISD 1971 Ex. 20; 1971 Tr. 890. Dr. Estes testified that the DISD was prepared to spend 10 million dollars to implement the television plan. 1971 Tr. 729.

As previously indicated, in 1975 the Fifth Circuit reversed both the elementary and secondary plans ordered in 1971 and remanded the case for a new hearing. 517 F.2d 92. The court of appeals stayed the

television plan pending appeal. Thus elementary school pupils in Dallas remained assigned to "neighborhood schools" under DISD zones adopted before the case until a new plan was implemented in September 1976 after the second remedy hearing which is described below. Actual desegregation under the 1971 order was limited to the secondary level.

The results of the 1971 order after four years of implementation are indicated by the December 1975 school enrollments contained in the DISD answers to interrogatories by the Strom intervenors. Strom Ex. 1. In December 1975 71.27% of Black pupils (44,736 of 62,711) attended 58 schools with less than 10% Anglo pupils. There were 23 schools with zero White pupils and 13,289 Blacks, and 7 schools with only 1 White student each and 7,416 Blacks. The full extent of the racial isolation is shown by the following table:

December 1975

Percentage of White Students	No. of Schools	White Students No.	Black Students No.	Hispanic Students No.	Other Students No.
90-100	20	9,546	175	405	130
80-89	30	19,802	1,057	1,440	357
70-79	8	5,268	1,094	880	80
60-69	11	9,797	3,060	1,570	206
50-59	14	5,789	1,554	3,213	164
40-49	8	2,410	1,442	1,405	90
30-39	10	2,159	2,091	1,770	92
20-29	8	1,718	3,069	1,042	117
10-19	10	1,189	3,093	3,409	85
1-9	15	442	6,766	3,236	107
Less than 1%	44	56	35,970	391	11
Total	178	58,176	62,771	18,943	1,445
% of Total		41.16	44.41	13.4	1.02

Source: This table is derived from data in Strom Exhibit 1 (DISD answers to Strom interrogatories).

IV. The 1976 Remedy Hearing.

A. The DISD Plan, the Hall Plan, Plaintiffs' Plans A & B, the NAACP Plan.

At the 1976 remedy hearing six desegregation plans were presented. Four plans contained pupil assignment proposals in sufficient detail to determine the impact on each one-race school. The greatest amount of desegregation would have been achieved by plaintiffs' Plan A. Plan B achieved somewhat less desegregation, and Dr. Hall's Plan and the DISD Plan achieved even less. The NAACP Plan which proposed desegregation of every school and the Dallas Alliance Plan were the other proposals submitted at the hearing. The latter plans were pupil assignment concepts without completely detailed pupil assignment schemes. The analysis of the plans in the district court's opinion describes their assignment techniques in some detail, but fails to state the extent of desegregation each plan was designed to achieve. 412 F.Supp. at 1199-1203.

The DISD Plan (Def. Ex. 12) described in the district court opinion (412 F.Supp. at 1199-1200), indicates that as of December 1, 1975 the district enrolled 141,122 pupils of whom 58,023 (41.1%) were Anglo, 62,767 (44.5%) were Black, 18,889 (13.4%) were Mexican-American, and 1,443 (1%) were listed as "other". Tr. Vol. 1. 60-61; Def. Ex. 12.²⁶ The plan defined as

²⁶ Citations to testimony at the 1976 hearing are to Volume and page numbers in the transcript. The 1976 transcript consists of 10 Volumes, each of which is paginated beginning with page 1.

"integrated" all schools in which the minority enrollment was between 25% and 74%, and there was no reassignment of pupils to or from 55 such schools. Tr. Vol. I. 149, 162; Def. Ex. 12. This feature exempted from participation in the plan 40% of all White pupils and 24% of minority pupils. Tr. Vol. III, 19. The Board plan limited desegregation by busing to grades 4-8, in a proposal which paired 38 Anglo schools with 16 minority schools. Tr. Vol. I. 99-101. Less than 5% of the Black students in the district were involved in the pairing arrangement. *Id.* at 236.

The DISD Plan proposed a continuation of the majority-to-minority transfer plan which it was estimated would involve 1,300-2,000 students, and proposed the establishment of a number of magnet schools (called Vanguard schools, Academies and Magnets at the elementary, middle and high school levels respectively) with an estimated 2,500 pupils at the beginning. *Id.* at 247-248. Overall the plan would have assigned about 20,360 Black students (one-third) to integrated schools (as defined by the DISD) and left two-thirds of them or 42,824 in predominantly Black schools. *Id.* at 306-307. It would have left between 97 to 100 one-race schools. *Id.* at 308. Under the DISD plan most Whites and Mexican-Americans were desegregated but most Blacks were left isolated. Tr. Vol. III, 21-22.

Another desegregation plan (Hall Ex. 5) was presented by Dr. Josiah Hall, who was appointed by Judge Taylor as desegregation consultant to the court

in late 1975, and called as a court witness. Tr. Vol. IV. 118. Dr. Hall served as Superintendent of Schools in Miami, Florida (Dade County) from 1957 to 1968, and worked from 1968-1972 as Asst. Director of the Florida School Desegregation Consulting Center at the University of Miami. He had assisted in drawing plans for twenty Florida school systems. *Id.* at 119-120. He prepared a plan by drawing a set of guidelines which he delivered to Dr. Estes and his staff who produced the plan in accordance with the instructions. *Id.* at 121-122. The guidelines and plan were then amended by Dr. Hall who worked with the DISD administrative staff. *Ibid.* Dr. Hall's guidelines included *inter alia*:

1. Assign kindergarten and first grade pupils to schools near their homes without references to ethnic groups. *Id.* at 129. (Dr. Hall's exclusion of grades K-1 was based on the 45 minute shorter school day for these grades, and on avoiding separate bus runs for these pupils).

2. Assign pupils in other grades so that no school will have more than approximately 75% minority pupils or less than approximately 30% minority pupils. *Ibid.*

3. Where individual schools or adjacent schools meet the 75-30% target leave them intact or combine them. *Id.* at 129-130.

4. Assign pupils so that they spend a maximum of 30 minutes being transported. *Id.* at 130.

5. Organize other schools into grades 2-5, 6-7, 8-9 and 10-12, and arrange a pattern moving inner city pupils in grades 2-5 outward, and pupils in grades 6-7 from outer city inward. *Id.* at 131.

6. Should time and distance or other significant factors prevent achieving the 75-30% minority range this time and distance information should be carefully documented, and any such schools should have superior facilities. *Id.* at 132.²⁷

Dr. Hall recommended staggering school opening times to reduce busing costs. *Id.* at 154. Dr. Hall did not conduct any actual time-distance studies in relation to the schools in the Oak Cliff area which were left all-Black under his plan. *Id.* at 176-177. Dr. Hall's plan left about 29,973 Black pupils in all-Black schools, plus another several thousand in grades K-1 who were excluded from his plan to make a total of about 34,000 in all-Black schools. *Id.* at 814-185; Hall Ex. 5. Plaintiffs' expert witness Dr. Willie said Dr. Hall's plan would leave 34 one-race schools with 50% of the Blacks in the system segregated. Tr. Vol. III. 29.

Plaintiffs presented two plans prepared by Plaintiffs' attorney Edward Cloutman (Vol. III, 230 *et. seq.*) and staff following guidelines set forth by Plain-

²⁷ Other guidelines stated by Dr. Hall had to do with utilizing remedies in Title VII of Public Law 93-800, insuring that transportation should not be disproportionate for any ethnic group, and using 72 passenger school buses. *Id.* at 132-137.

tiffs' expert witness Dr. Charles V. Willie, a Professor at the Harvard University Graduate School of Education. Dr. Willie had served as one of the court-appointed masters in the Boston school desegregation case (Tr. Vol. III. 2-5) and was a Black native of Dallas who had attended its segregated public schools. *Id.* at 15. Dr. Willie proposed that desegregation should be based on creating several desegregated subdistricts each of which would have no population group constituting less than about one-third or more than two-thirds. *Id.* at 5-6. He recommended a uniform grade structure, and that attendance areas should be redrawn and not based upon those used during the period of segregation. *Id.* at 7. He thought the plan should deal with all grades in the system, exempting only kindergarten because it was a voluntary program which pupils were not required to attend. *Id.* at 10. He thought that magnet schools which would have the district-wide racial ratios were useful, and that there should be a few such schools with extraordinary program offerings. *Id.* at 11.²⁸

Plaintiffs' Plan A, (Pl. Ex. 16) was preferred by the majority of the class members who met with counsel to consider the plans. Tr. Vol. III. 286. Plan A would have desegregated every school in the district. *Id.* at

²⁸ Dr. Willie also advocated a program to monitor desegregation (*Id.* at 8), and affirmative action to hire minority teachers and administrators, (*Id.* at 11), human relations training for school staff (*Id.* 12), community preparation (*Id.* at 13), and due process procedures for student discipline (*Id.* at 14).

293. The plan used Dr. Willie's concept of creating integrated subdistricts and then using pairing to desegregate the schools within each subdistrict. *Id.* at 239. Plan B used the same techniques but achieved less success in desegregating the system because it was based on a 30 minute time limit for pupil transportation. *Id.* at 261. This 30 minute limit resulted in leaving eight elementary schools, two junior highs and one high school all Black in the Oak Cliff area in the southern part of the city. Plan A which desegregated all of the schools had some bus trips which plaintiffs knew to be longer than 30 minutes. *Id.* at 373. One of the longer proposed pairings, between Lisbon school in Oak Cliff and Withers school in northern Dallas, was measured as 22 miles and the trip required 35 minutes when the distance was measured on a Sunday. *Id.* at 375, 382. Plaintiffs estimated that Plan A transported 55,484 pupils for purposes of desegregation; the district court opinion stated a higher figure of 69,000 students based on a DISD exhibit. Pl. Ex. 16; Def. Ex. 21; 412 F.Supp. at 1200. Similarly, plaintiffs stated that Plan B bused 37,847 students for desegregation and the DISD thought it was 47,000. Pl. Ex. 16; Def. Ex. 21; 412 F.Supp. at 1200.

The NAACP Plan (NAACP Ex. 2) was devised by Dr. Charles Hunter of Bishop College in Dallas. He proposed a system of pairings in which pupils would be bused to and from segregated neighborhoods in both directions in grades 1-3 and 4-6, and a desegre-

gated feeder pattern for secondary schools. Tr. Vol IV. 6. The plan proposed to eliminate all one-race schools. *Id.* at 41. Dr. Hunter calculated that about 40,000 students would be bused under his plan. *Id.* at 47. He estimated that the maximum transportation time would be 40 minutes. *Id.* at 53-44.

B. Court Ordered Plan—Dallas Alliance Concept as Developed by DISD.

The desegregation plan contained in the final order of April 7, 1976 (Pet. App. No. 78-253, pp. 53a-129a), was based on concepts of the Educational Task Force of the Dallas Alliance, an *amicus curiae* in the case, and was developed in its details by the DISD in accordance with the district court's direction. The concept was presented by Dr. Paul Geisel, Executive Director of the Dallas Alliance. Tr. Vol V. 2 *et. seq.* The Dallas Alliance proposal as revised March 3, 1976 was in Court Exhibits 8-9, Tr. Vol. IX. 361. The Alliance proposed the general concepts which appear in the final order, including creating a group of desegregated subdistricts but also an all-Black Oak Cliff subdistrict; leaving grades K-3 on a neighborhood assignment plan; using the integrated subdistricts to desegregate grades 4-8 by busing pupils to schools located in the center of the subdistricts (all formerly White schools); assigning high school students to the nearest area high school; and establishing several magnet high schools. Court Exhibit 8. The plan attempted to limit busing to 30 minutes. Tr. Vol. V. 49. Dr. Geisel acknowledged that at the K-3 level between 108 and

138 schools would remain one-race schools under the concept. *Id.* at 197-198. He acknowledged that the plan would leave an estimated 18,000 students in the all-Black Oak Cliff subdistrict. *Id.* at 208. He estimated the plan would require transportation of about 14,000 students, and said that the attempt was to keep bus rides down to 20 minutes. *Id.* at 258. The Alliance proposal left seven one-race high schools; three in North Dallas and four in the Black area in the south. *Id.* at 335.

Appendix A to the district court's Final Order of April 7, 1976 (Pet. App. No. 78-253, 84a-120a, 123a-125a) contains projected enrollments by race in each subdistrict and school except the voluntary district-wide magnet schools. The tables in Appendix A detail the extent of desegregation which was sought and the degree of segregation which was to continue. *Id.* at 84a *et seq.*

The order projected enrollments for 19 high schools with attendance districts.²⁹ The substantial segregation which the order contemplated at the high school level is indicated in the note below which is drawn from the court's appendix.³⁰ The court ordered plan

²⁹ The Magnet high schools are apparently not included in the projection.

30/	Senior High Schools 9-12								Bldg. Cap.
School	Anglo		Black		M-A		Minority	Total	
<u>Northwest Subdistrict</u>	No.	%	No.	%	No.	%	%		
Hillcrest ^{1/}	1634	96.2	38	2.2	27	1.6	3.8	1249 ^{1/}	1800

contemplated that there would be five all-Black high schools enrolling nearly 80% of all Black high school students (11,323 out of 16,269 or 69.59%). Note 30, *supra*.

School	Senior High Schools 9 - 12								Bldg. Cap.
	Anglo	Black	M-A	Minority	Total				
Thos. Jefferson	1583	68.4	465	20.1	267	11.5	21.6	2315	2100
North Dallas	280	17.2	620	38.1	728	44.7	82.8	1628	1100
L.G. Pinkston ^{2/}	108	4.9	1506	68.2	594	26.9	95.1	1633 ^{2/}	3000
W.T. White	2585	96.1	43	1.6	61	2.3	3.9	2689	2600
<u>Northeast Subdistrict</u>									
Bryan Adams	3240	95.2	0	0	163	4.8	4.8	3403	3500
James Madison	0	0	1685	98.1	30	1.7	99.8	1715	2100
Skyline	2040	64.6	925	29.3	193	6.1	35.4	3158	4000
Woodrow Wilson	888	59.0	287	19.0	331	22.0	41.0	1506	1500
<u>Southeast Subdistrict</u>									
Lincoln	0	0	1380	100.0	0	0	100.0	1380	2100
W.W. Samuel ^{3/}	1850	89.0	89	4.3	140	6.7	11.0	2079	3000
H. Grady Spruce	1667	71.7	412	17.7	246	10.6	28.3	2325	3000
<u>Southwest Subdistrict</u>									
David W. Carter	705	38.3	1051	57.0	87	4.6	61.7	1843	2000
Justin F. Kimball	1653	74.6	306	13.8	258	11.6	25.4	2217	2100

1/ The former Franklin school will house 450 ninth grade students from Hillcrest High School.

2/ The former Edison school will house 575 ninth grade students from L.G. Pinkston High School.

3/ Children enrolled in the program for the deaf are included.

In the newly created East Oak Cliff subdistrict the plan contemplated that there would be two high schools, four middle schools and 20 elementary schools which would be over 90% Black. Pet. App. No. 78-253, 113a-118a. The total projected pupil population of the East Oak Cliff subdistrict was:

	<u>Pupils</u>	<u>Percentage</u>
Anglo	512	1.9
Black	26,202	95.3
Mexican-American	783	2.8

Id. at 84a.

To explain the manner in which the plan desegregates some grades but not others in the "integrated" subdistricts we use as an example the C.F. Carr school area, a minority area located in the Plan's Northwest subdistrict. At the K-3 level, pupils living in the Carr area attend Carrschool which serves only those grades. Carr was projected by the court to be .3%

Sunset	1216	60.8	124	6.2	661	33.0	39.2	2001	1800
Adams	440	32.6	438	32.5	471	34.9	67.4	1349	1300
<u>East Oak Cliff Subdistrict</u>									
Roosevelt, F.D.	7	.3	2590	99.1	17	.6	99.7	2615	2200
South Oak Cliff	0	0	4162	100.0	0	0	100.0	2762	2600 ^{4/}
<u>Seagoville Subdistrict</u>									
Seagoville 7-12	817	81.1	148	14.7	43	4.3	19.0	1008	750

^{4/} The former Zumwalt School will house 1,400 ninth grade students from South Oak Cliff High School.

Source: Pet. Appendix No. 78-253, pp. 90a, 97a, 104a, 111a, 117a, 119a.

Anglo, 96.1% Black, and 3.3% Chicano. *Id.* at 85a. Carr area pupils in grades 4-6 are bused northward to attend the Burnet school. *Id.* at 86a-87a. Burnet also receives pupils from the Anglo Cabell school area as well as its own area and was projected by the court ordered plan to be 52.3% Anglo, 38.1% Black and 9.6% Chicano. *Id.* at 86a. The plan provided that pupils in grades 7 and 8 who live in the Carr area would be transported a considerable distance farther north to the E.D. Walker school, which would be fed by pupils from about ten other schools. Walker was also projected to be desegregated under the plan with a student body 51.9% Anglo, 46.8% Black, and 1.3% Chicano. *Id.* at 88a. Then at the high school level in grades 9-12 pupils living in the Carr area are assigned to the nearby L.G. Pinkston High School. *Id.* at 91a. However, since the plan does not use the same desegregative methods at the high school level, the Carr area pupils attend a predominantly minority high school. Pinkston was projected by the plan to enroll 4.9% Anglos, 68.2% Blacks, and 26.9% Chicanos. *Id.* at 90a. The Pinkston area was made up of the attendance zones of Carr and five other predominantly minority elementary schools. *Id.* at 91a. The pattern at Carr is duplicated throughout the "integrated" subdistricts of the plan: Minority pupils are segregated in grades K-3 and 9-12. They attend desegregated schools in grades 4-8 when they are bused to formerly all-White schools in the northern part of the school district.

The court ordered plan was implemented in September 1976. The DISD report to the district court filed in April 1979 indicates the results achieved after three years of operation. In 1979 Black students continued to be substantially isolated in the DISD. Nearly three out of every five Black pupils attended a 90% or more Black school. To be precise, 58.93% of all Black pupils (38,484 out of 65,302) attend schools which are less than 10% Anglo. The accompanying chart indicates the results of 24 years of school desegregation litigation against the DISD.

1979

Percentage of White Students	No. of Schools	White Students		Black Students		Hispanic Students		Other Students	
		No.	%	No.	%	No.	%	No.	%
90-100	7	3,643	8.14	129	.2	153	.7	51	3.76
80-89	11	4,628	10.35	309	.47	414	1.9	107	7.89
70-79	9	4,574	10.23	1,013	1.55	363	1.66	59	4.35
60-69	8	3,681	8.23	1,365	2.09	558	2.55	83	6.12
50-59	22	11,295	25.25	6,568	10.06	2,552	11.69	253	18.64
40-49	24	7,906	17.68	5,002	7.66	4,580	20.97	275	20.26
30-39	20	5,004	11.19	4,707	7.21	4,319	19.78	187	13.78
20-29	13	1,711	3.83	2,671	4.09	2,251	10.31	139	10.24
10-19	15	1,635	3.65	5,054	7.74	4,044	18.52	123	9.06
1-9	24	547	1.22	13,475	20.63	2,158	9.88	56	4.13
Less than 1%	34	104	.23	25,009	38.3	446	2.04	24	1.77
Total	187	44,728	100	65,302	100	21,838	100	1,357	100
% of Total		33.57		49.02		16.39		1.02	

Source: This table is derived from data in the
April 15, 1979 DISD Report to the District Court.

The 1979 DISD report to the Court indicates that there are now eight high schools with 90% or more minority pupils enrolling 59% of the Black high school pupils (11,047 of 18,718). The East Oak Cliff subdistrict in 1979 enrolled a total of 26,770 pupils in 26 schools, e.g., three high schools, three middle schools and twenty elementary schools; 25,830 (96.49%) of these pupils are Black, 648 (2.42%) are Mexican-American, 273 (1.02%) are Anglo, and 19 (.07%) are other ethnic groups.³¹

The voluntary desegregation programs in the district involve relatively small numbers. In 1979 the majority-to-minority transfer program was used by 1,403 pupils or about 1.5% of the pupils in the district. Ninety-six percent of the majority-to-minority transfer pupils were Black. A total of 8,641 pupils or 6.47% of the district's pupils were involved in the magnet-type schools at all levels: 2,466 at Vanguard schools (grade 4-6), 2,719 pupils at Academies (grade 7-8) and 3,456 at Magnets (9-12).

The April 1979 report also indicates the current extent of pupil transportation "for desegregation purposes" in the DISD:

³¹ The April 1979 report indicated the 26 schools currently in the East Oak Cliff subdistrict (excluding Magnets): Smith, Roosevelt and South Oak Cliff High Schools, Ervin, Storey and Stone Middle Schools, and the following elementary schools: Bowie, J.N. Bryan, Budd, Bushman, Darrell, Harilee, Johnston, Lisbon, Marsalis, Marshall, McMillan, Miller Mills, Oliver, Patton, Pease, Russell, Seguin, Thornton, Young.

Grades 4-6	8,127
Grades 7-8	3,846
Vanguards	328
Academies	806
Magnets	<u>3,456</u> 16,456

Thus about 12.4% of the pupils in the DISD are being bused "for desegregation purposes".

V. The 1978 Fifth Circuit Decision.

On May 22, 1978 the Fifth Circuit remanded the case to the district court "for the formulation of a new student assignment plan and for findings to justify the maintenance of any one-race schools that may be a part of that plan." 572 F.2d 1010, 1018. The opinion of the court by Judge Tjoflat, speaking for a unanimous panel with Judges Coleman and Fay stated:

The DISD acknowledges that the creation of the all black East Oak Cliff subdistrict and the existence of a substantial number of one-race schools militate against the finding of a unitary school system. It contends, however, that this is the only feasible plan in light of natural boundaries and "white flight." The district court was instructed in the opinion of the prior panel to consider the techniques for desegregation approved by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S.

1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). We cannot properly review any student assignment plan that leaves many schools in a system one-race without specific findings by the district court as to the feasibility of these techniques. *Davis v. East Baton Rouge Parish School Board*, 570 F.2d 1260 (5th Cir. 1978). There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing. See *Mims v. Duval County School Board*, 329 F.Supp. 123, 133-34 (M.D. Fla.) *aff'd* 447 F.2d 1330 (5th Cir. 1971).

Of particular concern are the high schools that are one race. Although students in the 4-8 grade configurations are transported within each sub-district to centrally located schools to effect desegregation the district court's order leaves high school students in the neighborhood schools. Within three of the four integrated subdistricts, this results in high schools that are still one-race schools. The district court is again directed to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools and to re-evaluate the effectiveness of the magnet school concept. If the district court determines that the utilization of pairing, clustering, or the other desegregation tools is not practicable in the DISD, then the district court must make specific findings to that effect.

572 F.2d at 1014-1015 (footnotes omitted).

SUMMARY OF ARGUMENT

I. The District Court Properly Held that the DISD was not a Desegregated Unitary System in 1970-71.

Dallas schools were operated on a racially segregated basis pursuant to an elaborate code of segregation statutes that were not repealed until 1969. The progress of desegregation was slow and limited during ten years of litigation from 1955 to 1965 before several district judges who simply refused to enforce *Brown v. Board of Education* for years and whose judgments in the case were reversed on appeal seven times. See Opinions Below, *supra*. The strong reluctance of the court to desegregate the Dallas Schools is exemplified by Judge Davidson's unusual opinion in *Borders v. Rippey*, 184 F.Supp. 402 (N.D. Tex. 1960). Desegregation finally began with a grade-a-year plan in 1961 which was accelerated to reach all grade levels in 1967 as the result of several appellate decisions. The last order in the case by Judge Davidson in 1965 approved a DISD plan to desegregate the schools under a resolution which gave the Superintendent *carte blanche* as to how to desegregate the system. This case was filed in 1970 after the first litigation had been dormant for five years during which period the level of segregation in the DISD actually increased. Plaintiffs proved at the 1971 liability trial that over 90 percent of Black pupils attended schools which were 90% or more Black, that faculties were still largely segregated in the same pattern as the

students, and that the school district had not taken steps to comply with intervening decisions of this Court or of the Fifth Circuit which spelled out the affirmative duty to dismantle the dual school systems. *Green v. County School Board*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Davis v. School Commissioners of Mobile County*, 402 U.S. 33 (1971); *Bradley v. School Board*, 382 U.S. 103 (1965); *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969); *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), rev'd in part on other grounds *sub. nom. Carter v. West Feliciana Parish School Board*, 396 U.S. 226 (1969). The DISD acknowledged at the trial that its faculty segregation was not in compliance with *Singleton*, and that it had not adopted a majority-to-minority transfer program as required by the governing case law. The Board contended that its pupil assignment policy based on neighborhood zones are lawful, but readily admitted that zones had not been designed to eliminate one race schools. This placed the board in conflict with Fifth Circuit decisions such as *Davis v. Board of School Commissioners, of Mobile County*, 393 F.2d 690 (5th Cir. 1968); *Davis v. Board of School Commissioners, of Mobile County*, 414 F.2d 609 (5th Cir. 1969), as well as this Court's decisions in *Swann* and *Davis*, cited *supra*. The district court's finding that the system was not unitary was not appealed by the DISD which limited its appeal to remedy issues. The arguments of the Curry and Brinegar intervenors,

neither of whom participated in the liability trial, attacking the court's finding of a violation are entirely without merit. Their arguments that additional findings of "intentional" segregation are required in a case such as this are entirely put to rest by this Court's recent decision in *Columbus Board of Education v. Penick*, ___ U.S. ___ (July 2, 1979) and *Dayton Board of Education v. Brinkman*, ___ U.S. ___ (July 2, 1979) (*Dayton II*). The DISD had not fulfilled its affirmative duty to desegregate and "[e]ach instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment." *Columbus, supra*, slip opinion at 8. Because the remaining segregation in the system was so extensive, affecting 90% of Black pupils when the case was filed, a system-wide remedy was required in accordance with *Swann* and *Davis*. Cf. *Keyes v. School District No. 1*, 413 U.S. 189 (1973).

II. The Court of Appeals was Correct in Deciding that the Court-Adopted Desegregation Plan Failed to Comply with *Swann*.

The District Judge announced his opposition to "massive busing" at the start of the case, before any evidence on remedies, and in the order directing the DISD to file a plan to comply with the *Swann* case. The Fifth Circuit has twice reversed plans approved by the district judge which left much of the segregation intact. The first district court order reversed by

the Fifth Circuit avoided any reassignment of elementary school children by adopting a ten million dollar plan for Black and White children to get common instruction for a few hours each week by television while remaining in their segregated schools. Because this order was stayed, and the appeal was not decided for years, there was no elementary school relief until 1976 six years after the case was filed. The secondary school plan which was reversed on the first appeal was designed to achieve minimal desegregation by bringing one-race schools to a point just below the 90% one-race point. A few Black students were assigned to White schools and a few Anglos (only a handful of whom subsequently attended) were assigned to 100% Black schools to bring them slightly under 90% Black enrollments. The Fifth Circuit held that this was not a *bona fide* desegregation effort.

On remand, the district court adopted another plan which insured that much segregation would remain. The approved plan limited affirmative desegregation steps to grades 4-8 thus excluding the primary and high school grades from any additional desegregation, except for voluntary transfers. By limiting real desegregation efforts to less than half the grades in the system the Court insured that the dual system would not be dismantled. Failure to desegregate high schools, was justified on the basis of the failure of the 1971 effort, and the fear of White flight. The segregation in the system was reinforced by the plan's creation of a new all-Black subdistrict consisting of

26 schools and over 26,000 Black pupils who were precluded from desegregation at any grade level, except by voluntary transfers out of the subdistrict. The Fifth Circuit properly remanded the case for the development of a new plan and for specific findings to justify any one-race schools which may be a part of a new plan. The Fifth Circuit remand was required by *Swann* and *Davis* because the DISD had failed to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. The DISD should be ordered to promptly adopt a plan in compliance with *Swann* and *Davis*.

III. The Arguments of the Brinegar and Curry Petitioners for a Modification or Overruling of *Swann* should be Rejected.

The remaining arguments of the intervening groups representing integrated neighborhoods in East Dallas and Anglo areas of North Dallas are insubstantial and without merit. The argument for a special rule exempting their areas from inclusion in a desegregation plan is contrary to *Swann's* requirement of system-wide remedies. Their position would engraft onto the law a new principle designed to create havens for white flight by establishing zones in a dual system which would be exempt from desegregation remedies. The Fifth Circuit quite properly saw no merit in the argument when it was advanced by the Curry group in the 1971 appeal.

The Curry arguments for an overruling of *Swann* are based on anti-busing social science testimony

which was highly disputed at the trial and which the district court declined to attempt to evaluate. Respondents disagree with virtually all of the Curry assertions about the desegregation process, and submit that their rebuttal witnesses entirely discredited the Curry evidence. In view of the recency of this Court's decisions on the subject we make no detailed submission on the point and rely on *Columbus* and *Dayton II*, as a reaffirmation of *Swann*.

ARGUMENT

I. The District Court Properly Held that the DISD was not a Desegregated Unitary System in 1970-71.

The district court's 1971 finding of a constitutional violation is unassailable. The finding rests on a record which demonstrates conclusively that, prior to the filing of the suit in 1970, the DISD had not effectively dismantled the dual school system as required by this Court's decisions in *Brown v. Board of Education*, 347 U.S. 483 (1954); *Green v. County School Board*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) and *Davis v. Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971).

Until 1961 the DISD was totally segregated under an elaborate and detailed code of school segregation laws. Statement *supra* at Part II. The DISD's defense of its segregation was so strong and the district court

was so reluctant to enforce *Brown* that the DISD was not enjoined to desegregate all grade levels until seven appeals produced the 1965 order calling for complete desegregation by September 1967—thirteen years after *Brown I*. One must read the opinions of Judge Davidson, and his predecessors on the district bench in the earlier Dallas school case³² to recall the realities of the era of massive resistance to *Brown*, and the sad fact that "the dilatory tactics of many school authorities",³³ sometimes met with judicial approval rather than disapproval. Such was the case in Dallas. See Opinions Below, part II., *supra*.³⁴

A reading of Judge Davidson's opinions in the prior Dallas school case conveys an understanding of the context of the 1965 order which approved a school board resolution giving the Superintendent virtually complete discretion, and little or no direction, as to how to desegregate the system. Statement *supra* Part

³² See Opinions Below, Part II, *supra*; see particularly *Borders v. Rippey*, 184 F.Supp. 402 (N.D. Tex. 1960).

³³ The quoted phrase is from *Swann v. Board of Education*, 402 U.S. 1, 14 (1971), and appears in a passage which refers to *Alexander v. Holmes County Board of Ed.*, 396 U.S. 19 (1969); *Griffin v. School Board*, 377 U.S. 218 (1964); and *Green v. County School Board*, 391 U.S. 430 (1968).

³⁴ The DISD brief complains of the burden of two and a half decades of school desegregation litigation, but contains no word of acknowledgement that the DISD shares any responsibility for the delay in establishing a unitary system. The opinions below make it evident that the DISD had many opportunities over the years to shorten the litigation by *bona fide* compliance with *Brown*.

II. The arguments of some of the petitioners that the pupils in Dallas have been assigned to schools by the federal courts since 1965 are readily dispelled by a reading of the 1965 proceedings and order. *Ibid.* The *Tasby* respondents filed this case after five years experience under the 1965 order had *increased* the level of segregation of Black pupils and the DISD had ignored intervening decisions by this Court and the Fifth Circuit in desegregation requirements. *Ibid.*

The "desegregated" DISD attendance areas were established without any effort to eliminate one-race schools even though Fifth Circuit Law held that was a School Board's duty. See *Davis v. Board of School Commissioners of Mobile County*, 393 F.2d 690 (5th Cir. 1968); *Davis v. Board of School Commissioners of Mobile County*, 414 F.2d 609 (5th Cir. 1969); Statement, *supra* Part II. The district failed to begin a faculty desegregation program until 1968, and when the suit was filed Black schools were readily identifiable by their disproportionately all-Black faculties, while only a handful of Black teachers taught in White schools. Statement, *supra* Part II. The district had not promoted integration by affirmative race-conscious means such as rezoning, pairing or clustering of schools, changes of grade structures, or transportation prior to the suit. In 1970-71 the Magnet school program had not been developed except at Skyline High School which was virtually all-White. Prior to the filing of the lawsuit and thereafter the DISD continued to plan, build and open new one-race schools in

a manner which was found by the Fifth Circuit to violate the principle of *Swann*. *Ibid.* Prior to the 1971 trial the DISD did not acknowledge any duty to plan new schools so as to promote desegregation. *Ibid.* All of this evidence was uncontradicted and came from the DISD witnesses and records.

The trial court's finding that the system was dual in 1970-71 thus rests on more than the strong showing of racial isolation. However, in view of the prior statutory dual system the statistics themselves were so compelling that Judge Taylor wrote . . . "it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain." 342 F.Supp. 947. That was indeed the only supportable conclusion about a system which had never taken affirmative steps to bring about integration and which had 90% of its Black pupils in 90% or more Black schools and over 60% of them in 99-100% Black schools. In subsequent reference to this finding, Judge Taylor in 1976 equivocated somewhat, stating: "This Court has kept in mind throughout these proceedings that its findings in 1971 were that the 'vestiges' of a dual school system remained in the DISD, and not that the DISD was a dual system at that time." 412 F.Supp. at 1196. However, less than a month later in a Supplemental Opinion of April 7, 1976 Judge Taylor reaffirmed unequivocally his finding that the system was dual:

So that there can be no mistake about this matter the Court will state once again: it has no interest in "running the school district" or in playing the role of dictator to the School Board or Dr. Estes and his staff. However, the Court will not stand aside where the DISD has been found to operate a dual school system which discriminates between Anglo and minority schools, as was found in 1971 and as was reemphasized in the disparity shown in Dr. Chase's report and other evidence introduced during the recent hearings. The DISD must provide equal educational opportunity for all its students, in non-student assignment matters as well as in the area of student assignment.

* * *

With regard to the first item, the Court is quite aware that one of the central findings of the Chase Report was that a disparity remains between the predominantly Anglo centers and the predominantly minority centers in the areas of (a) facilities, (b) staffing patterns, and (c) educational offerings. The Court adopted these findings of Dr. Chase on page 9 of its Opinion when it said "... there is still a gap between intent to provide equal educational opportunity and the achievement of this goal."

The Court is of the opinion that the DISD can and must correct these disparities—that is what "providing equal educational opportunity" is all about.

412 F.Supp. at 1211.

Petitioners' briefs make a great deal of the fact that the 1971 liability finding is couched in terms of "vestiges of a dual system" (emphasis ours). 342 F.Supp. at 947; Pet. Br. No. 78-253, pp. 58-60; Pet. Br. No. 78-283, pp. 24-26; Pet. Br. No. 78-282, p. 9. The DISD argues that there was a mere "trace" of a dual system in 1970-71, and the "the dual system was no more." Pet. Br. No. 78-253, p. 59. The argument is thin indeed when it is measured against the simple facts stated by the district judge that in 1970-71 "91% of Black students [are in] 90% or more ... minority schools, 3% of the black students attend schools in which the majority is white or Anglo." 342 F.Supp. at 947. Petitioners' emphasis on the word "vestiges" should not be permitted to conceal the obviously substantial extent of the racial isolation in Dallas in 1970-71. The segregation of 90% of Black pupils is clearly substantial and requires and system-wide remedy. *Swann, supra*; *Davis, supra*; *Keyes v. School District No. 1*, 413 U.S. 189 (1973); *Columbus Board of Education v. Penick*, ___ U.S. ___, (July 2, 1979), slip opinion 5-7.

The fact that this case reopened litigation to desegregate the DISD after five years experience with a prior court order which had conspicuously failed to eliminate the dual system does not create any novel issue. The Fifth Circuit has required many districts to improve older ineffective desegregation plans in light of *Swann*. See e.g., *Ellis v. Board of Pub. Inst. Orange County, Fla.*, 465 F.2d 878, 879-890 (1972),

cert. denied 410 U.S. 966 (1973); *Lee v. Autauga County Bd. of Ed.*, 514 F.2d 646, 648 (1975) ("The 1970 plan is a remedy for state-enforced segregation and not a judicial eraser that wiped clean the county's constitutional slate."); *Hereford v. Huntsville Bd. of Ed.*, 504 F.2d 857 (5th Cir. 1974), *cert. denied* 421 U.S. 913 (1975); *Lee v. Tuscaloosa City School System*, 576 F.2d 39 (5th Cir. 1978); *Miller v. Board of Ed. of Gadsden*, 482 F.2d at 1234 (5th Cir. 1973); *United States v. Board of Ed. of Valdosta*, 576 F.2d 37 (5th Cir.), *cert. denied* 99 S.Ct. U.S. 622 (1978); *United States v. South Park Ind. Sch. Dist.*, 566 F.2d 1221 (5th Cir.), *cert. denied* 99 S.Ct. 622 (1978); *United States v. Columbus Mun. Sep. School Dist.*, 558 F.2d 228 (5th Cir. 1977), *cert. denied* 434 U.S. 1013 (1978); *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir.), *cert. denied* 99 S.Ct. 571 (1978); *United States v. Seminole County Sch. Dist.*, 553 F.2d 992 (5th Cir. 1977).

Swann would have had little impact if the courts had not applied it to school districts which had earlier desegregation plans, because most southern systems had some orders before 1971. A sequence of events similar to that in Dallas occurred in *Swann*. As this Court recently recalled in *Columbus Board of Education v. Penick*, ___ U.S. ___, (July 2, 1979), in *Swann* an initial plan had been entered in 1965—the same year as Judge Davidson's order in Dallas—and affirmed on appeal by the Fourth Circuit, but the case was reopened and in 1969 the school board was re-

quired to adopt a more effective plan. *Columbus*, slip opinion p. 9; *Swann*, *supra*, 402 U.S. at 7. Indeed in *Swann* unlike Dallas, the 1965 pupil assignment program had been scrutinized in detail by both the court of appeals and the district court. *Swann v. Charlotte Mecklenburg Board of Ed.*, 369 F.2d 29 (4th Cir. 1966), affirming 243 F.Supp. 667 (W.D. N.C. 1965).

In Dallas the development of desegregation was left entirely to the discretion of the school authorities save for the direction that desegregation include certain grade levels on a specified schedule. Judge Davidson never passed on the attendance areas adopted by the DISD or ruled that the system had become unitary; his order of August 27, 1965 merely found that the "plan of desegregation was adopted in good faith and is being implemented and carried out with due diligence and constitutes deliberate speed under local circumstances and conditions", and approved the plan and ordered "defendants to proceed with integration in accordance with such plan". Def. 1971 Ex. 2.

In both *Swann* and Dallas it was clear that the school districts had not, prior to the reopening of the cases, taken steps to obey the mandate of *Green* to "dismantle the well-entrenched dual systems" and fulfill the "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green*, *supra*, 391 U.S. 430, 437-438

(1969). It was that failure which supports the court orders requiring new desegregation steps.

When the record and findings in Dallas at the time of the violation hearing in 1971 are measured against this Court's recent *Columbus* decision, *supra*, and the companion case *Dayton Board of Education v. Brinkman*, ___ U.S. ___ (July 2, 1979) (*Dayton II*), the existence of a constitutional violation in Dallas in 1971 seems undebatable. *Columbus* and *Dayton* reaffirm *Green* and *Swann* and the concept of an affirmative duty to desegregate. Some of the petitioners argue that there was no violation in 1971 because the district court failed to make findings that the DISD engaged in acts of intentional segregation after the 1965 court order. Thus it is argued by Brinegar et. al. that the segregation which existed in 1970-71 was not "intentional" and thus was not unconstitutional,³⁶ citing *Washington v. Davis*, 426 U.S. 229, 239 (1976); *Dayton Board of Education v. Brinkman*, 433 U.S.

³⁶ The Brinegar argument was not urged by Brinegar et. al. in either court below. In the district court Brinegar et. al. contended that some East Dallas schools were already desegregated by reason of residential integration and that such areas should not be subject to a busing plan. In the Fifth Circuit Brinegar et. al. urged affirmance of the district court's plan, but never made an argument that there should not be any remedy at all. It should be noted that Brinegar et. al. intervened in the case in 1975 after the Court of Appeals had affirmed the 1971 liability holding. This Court might simply decline to deal with the Brinegar argument on the ground that it was not raised or passed on below. *Adickes v. Kress & Co.*, 398 U.S. 144, 147, n.2 (1970) and cases cited.

406 (1977)(*Dayton I*); *Austin Independent School Dist. v. United States*, 429 U.S. 990 (1977); and *Pasadena City Board of Ed. v. Spangler*, 427 U.S. 424 (1976). Pet. Br. No. 78-283, pp. 23-35. Curry et.al. argue similarly that the DISD adopted "a racially neutral plan" in 1965 and that the 1971 finding of liability in this case is contrary to *Pasadena*, *supra*, and *Dayton I*, *supra*.³⁶

But of course segregation established pursuant to racial segregation statutes is "intentional."³⁷ *Colum-*

³⁶ Curry et.al. did not participate in the 1971 liability trial because they did not seek to intervene until July 9, 1971 making a motion for a continuance of the trial which was scheduled to and did begin three days later on July 12, 1971. See Docket entries. The district court allowed the intervention on July 22, 1971 after having filed the opinion determining liability. Curry et.al. appealed the 1971 judgment arguing that their North Dallas area was not subject to be included in the desegregation plan because it was developed after *Brown*. The Fifth Circuit rejected this argument. 517 F.2d at 108. The DISD supported the District Court's order in the 1971 appeal, and stated unequivocally in a brief: "This appeal, on the other hand, involves only the issue of remedy." Supplemental Brief of DISD in Fifth Circuit No. 71-2581, p. 3. Although the DISD petitioned for certiorari arguing other points (Pet. for Certiorari No. 75-265), Curry et.al. did not file a certiorari petition. Instead they have continued to seek to relitigate the findings of a trial in which they did not participate. Their present brief attacks the Fifth Circuit's 1975 decision with arguments not made in the first appeal. Pet. Br. No. 78-282, pp. 18-19.

³⁷ The Fifth Circuit rejected similar arguments based on *Spangler* and *Washington v. Davis*, *supra*, in *United States v. Seminole Cty. Sch. Bd.*, 553 F.2d 992 (5th Cir. 1977); *United States v. Board of Education of Valdosta*, 576 F.2d 37 (5th Cir.), cert. denied 99 S.Ct. 622 (1978).

bus and *Dayton II* demonstrate that this Court adheres to its holding in *Green, supra*, 391 U.S. at 437-442, and companion cases,³⁸ that it is the *effectiveness* of a desegregation plan in dismantling dual systems that determines compliance with *Brown*. Mr. Justice White's opinion in *Dayton II* stated:

But the measure of the post-*Brown* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system. *Wright, supra*, at 460, 462; *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, 37 (1971); see *Washington v. Davis*, 426 U.S. 229, 243 (1976). As was clearly established in *Keyes* and *Swann*, the Board had to do more than abandon its prior discriminatory purpose. 413 U.S. at 200-201, n.11, 402 U.S. at 28. The Board has had an affirmative responsibility to see that pupil assignment policies and school construction and abandonment practices "are not used and do not serve to perpetuate or re-establish the dual school system," *Columbus, ante*, at —, and the Board has a 'heavy burden' of showing that actions that increased or continued the effects of the dual system serve important and legitimate ends. *Wright, supra*, at 467, quoting *Green v. County School Board*, 391 U.S. 430, 439 (1968).

Slip opinion, pp. 10-11.

³⁸ *Raney v. Board of Education of the Gould School Dist.*, 391 U.S. 443 (1968); *Monroe v. Board of Commissioners of City of Jackson, Tenn.*, 391 U.S. 450 (1968).

In *Columbus* the Court, after quoting the language from *Green, supra*, that school boards were "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch" (slip opinion at 8, quoting *Green*, 391 U.S. 430, 437-438), went on to state:

Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment. *Dayton I*, 433 U.S. at 413-414; *Wright v. Council of City of Emporia*, 407 U.S. 451, 460 (1972); *United States v. Scotland Neck City Board of Education*, 407 U.S. 484 (creation of a new school district in a city that had operated a dual school system but was not yet the subject of court-ordered desegregation).

Slip opinion at 8.

Using language which might be addressed to the Curry and Brinegar arguments with equal relevance the Court in *Columbus* said:

The Board's continuing "affirmative duty to disestablish the dual school system" is therefore beyond question, *McDaniel v. Barresi*, 402 U.S. 39, 41 (1971), and it has pointed to nothing in the record persuading us that at the time of trial the dual school system and its effects had been disestablished. The Board does not appear to challenge the finding of the District Court that at the time of trial most blacks were still going to black schools and most whites to white schools. Whatever the Board's current purpose with respect to

racially separate education might be, it knowingly continued its failure to eliminate the consequences of its past intentionally segregative policies. The Board "never actively set out to dismantle this dual system." 429 F.Supp. at 260.

Slip opinion at 10. These holdings of *Columbus* and *Dayton II* are a reaffirmation of the holding of *Green*, *supra*. Portions of Mr. Justice Brennan's opinion in *Green* also seem as if they had been written in response to the Brinegar and Curry arguments:

In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former "white" school to Negro children and of the "Negro" school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School board such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

391 U.S. 430, 437-438 (1968).

Further, *Green* stated the rule reaffirmed in *Swann*, *Columbus* and *Dayton*, that desegregation plans must

be measured by their "effectiveness" and that courts should evaluate such plans in practice until "state-imposed segregation has been completely removed." 391 U.S. at 439.

And of course *Swann*, *supra*, provides a complete answer to the Curry argument based on the alleged racial neutrality of the DISD's post-1965 neighborhood attendance areas. Putting aside for the moment the fact that the district court did not find all of the attendance areas racially neutral in the 1971 liability opinion, *Swann* makes it plain that mere "neutrality" does not fulfill the affirmative duty to dismantle the dual system:

Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits. The objective is to dismantle the dual school sys-

tem. "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a "loaded game board," affirmative action in the form of remedial altering of attendance zones is proper to achieve truly non-discriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral.

402 U.S. 1, 28 (1971).

The DISD had clearly failed to dismantle the dual system when this case was brought in 1970. The arguments of Brinegar et.al. and Curry et.al. that the courts below had no remedial authority to deal with that failure are plainly untenable in light of this Court's decision in *Green*, *Swann*, *Columbus* and *Dayton II*.

II. The Court of Appeals was Correct in Deciding that the Court-Adopted Desegregation Plan Failed to Comply with *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

The first trial in this case took place about three months after this Court in *Swann* and *Davis* directed the use of busing, pairing, rezoning and similar "affirmative action" measures to dismantle dual school

systems, and rejected the argument that desegregation could be limited to walk-in schools. *Swann, supra*, 402 U.S. 1, 27-31; *Davis, supra*, 402 U.S. 33, 37. In the wake of *Swann* and *Davis* Judge Taylor, who presided over the trials in this case, announced his firm opposition to busing. He did so in the very order directing the school district to prepare a desegregation plan to comply with *Swann*. Judge Taylor's first opinion rejecting busing was issued July 16, 1971, before the Court had heard any evidence on remedies. *Tasby v. Estes*, 342 F.Supp. 945, 948-949 (N.D. Tex. 1971):

Now all of this is not as grim as it sounds. I am opposed to and do not believe in massive cross-town bussing of students for the sole purpose of mixing bodies. I doubt that there is a Federal Judge anywhere that would advocate that type of integration as distinguished from desegregation. There are many many other tools at the command of the School Board and I would direct its attention to part of one of the plans suggested by TEDTAC which proposed the use of television in the elementary grades and the transfer of classes on occasion by bus during school hours in order to enable the different ethnic groups to communicate. How better could lines of communication be established than by saying, "I saw you on TV yesterday," and besides that, television is much cheaper than bussing and a lot faster and safer. This is in no sense a Court order but is merely something that the Board might consider.

Several weeks later, Judge Taylor's above-quoted suggestion did become "a Court order" rejecting a busing plan because it would create unspecified "abrasions and dislocation" (342 F.Supp. at 950), and endorsing a plan to leave the schools segregated except for television at the elementary level and minimal satellite zoning at the secondary level. *Id.* at 951-955. The litigation which has followed in the ensuing eight years has revolved around the district court's opposition to busing³⁹— announced at the start— and the countervailing efforts of the Fifth Circuit to insure that the teachings of *Swann* and *Davis* were faithfully applied.

The court of appeals has twice held that desegregation plans adopted by the district court were inadequate to dismantle the dual system and failed to comply with *Swann v. Charlotte-Mecklenburg Board of Education*. 402 U.S. 1 (1971). *Tasby, supra*, 517 F.2d 92; 572 F.2d 1010. We believe those conclusions were clearly justified. Indeed we submit they were compelled by a conscientious application of *Swann* and *Davis*, as well as by a line of Fifth Circuit decisions requiring other school districts and district courts to adopt effective desegregation plans. Among many Fifth Circuit decisions rejecting inadequate de-

³⁹ See also *United States v. Texas Education Agency, (Richardson Ind. Sch. Dist.)*, 512 F.2d 896 (5th Cir. 1975), where the Fifth Circuit reversed an order by Judge Taylor which had failed to desegregate the few Black pupils in a suburb of Dallas by pairing nearby schools.

segregation plans are: *Davis v. East Baton Rouge School Board*, 570 F.2d 1260 (5th Cir. 1978) (decision by same panel as *Tasby*, also in April 1978); *Flax v. Potts*, 464 F.2d 865 (5th Cir.), *cert. denied* 409 U.S. 1007 (1972) (involving Ft. Worth, Texas); *Gaines v. Dougherty County Board of Ed.*, 465 F.2d 363 (5th Cir. 1972); *Ellis v. Board of Public Instruction of Orange County*, 465 F.2d 878 (5th Cir. 1972), *cert. denied* 410 U.S. 966 (1973); *Arvizu v. Waco Independent School District*, 495 F.2d 499 (5th Cir. 1974), on rehearing 496 F.2d 1309 (1974); *Hereford v. Huntsville Board of Ed.*, 504 F.2d 857 (5th Cir. 1974); *Lee v. Demopolis City School System*, 557 F.2d 1053 (5th Cir. 1977) *cert. denied* 434 U.S. 1014 (1978); *Lee v. Macon County Board of Ed. (Calhoun County)*, 448 F.2d 746 (5th Cir. 1971); *Lee v. Macon Cty. Bd. of Ed. (Marengo County)*, 465 F.2d 369 (5th Cir. 1972); *Lee v. Tuscaloosa City School System*, 576 F.2d 39 (5th Cir. 1978); *Lemon v. Bossier Parish School Board*, 566 F.2d 985 (5th Cir. 1978); *Miller v. Board of Ed. of Gadsden*, 482 F.2d 1234 (5th Cir. 1973); *Mills v. Polk County Board of Public Instruction*, 575 F.2d 1146 (5th Cir. 1978); *Weaver v. Board of Public Inst.*, 467 F.2d 473 (5th Cir. 1972), *cert. denied* 410 U.S. 982 (1973); *United States v. Board of Education of Valdosta, Georgia*, 576 F.2d 37 (5th Cir. 1978), *cert. denied* 99 S.Ct. 622 (1978); *United States v. South Park Ind. School Dist.*, 566 F.2d 1221 (5th Cir.), *cert. denied* 99 S.Ct. 622 (1978); *United States v. Desoto Parish School Board*, 574 F.2d 804 (5th Cir.), *cert. denied* 99

S.Ct. 571 (1978); *United States v. Seminole County School Dist.*, 553 F.2d 992 (5th Cir. 1977).

The decision below is consistent with this long line of decisions in which the Fifth Circuit has refused to sanction desegregation plans which leave one-race schools still segregated without a real justification under the principles of *Swann*. Indeed the Fifth Circuit's insistence that pairing and grouping of schools be used where feasible to eliminate one-race schools pre-dates *Swann*. *Allen v. Board of Pub. Inst. of Broward County*, 432 F.2d 362, 367 (5th Cir. 1970), *cert. denied* 402 U.S. 952 (1971) and cases cited. *Swann* would have been nullified if the Fifth Circuit had not been demanding in requiring a justification for one-race schools.

The Fifth Circuit's 1978 remand for a new pupil assignment plan and for further findings to justify the maintenance of any remaining one-race schools under that plan was a correct application of the principles of *Swann* and *Davis*. The 1976 court-adopted plan admittedly leaves many Dallas pupils in racially segregated schools. The remand for a new plan was appropriate because the 1976 plan failed to achieve the greatest possible degree of actual integration using the desegregation methods approved in *Swann* and *Davis*, and the district court failed to find that further desegregation was not practicable using such methods. Cf. *Swann*, *supra* 402 U.S. at 26. There were also no specific findings, nor could there have been, to demonstrate that the remaining segregated schools

were not the products of the dual system. Cf. *Swann*, *supra* 402 U.S. at 26.

The 1976 plan adopted by the district court made two principal choices which determined that a great deal of segregation would be untouched. One was the plan's use of affirmative action steps to promote desegregation only in grades 4-8. The choice to desegregate five grades and leave eight other grades (K-3 and 9-12) untouched by the plan (except for voluntary individual transfers) guaranteed that substantial segregation would remain. After three years of implementation, the plan has fulfilled this guarantee. The other decisive choice was the creation of a new all-Black East Oak Cliff subdivision within the school system and the adoption of a policy that students "would only be assigned to schools within the attendance subdistrict in which they live". 412 F.Supp. at 1202, 1203-1204. This decision excluded a projected 26,202 Black pupils, roughly 42% of all Blacks in the system in 1975-76, from any possibility of being assigned by the Board to a desegregated school. We discuss these two aspects of the 1976 plan separately below.

A. The District Court Erred in Refusing to Use Affirmative Integration Measures such as Pairing, Rezoning, or Transportation in the Primary Grades and High School Grades.

The decision to limit affirmative desegregation measures to grades 4-8, and to leave the "neighbor-

hood school" attendance areas intact for the lower and upper grades insured that desegregation in Dallas would affect less than half the system. We submit that there was no sufficient justification for leaving either category of schools completely untouched by affirmative desegregation measures. In other cases the Fifth Circuit has rejected similar categorical exclusions of parts of school systems from desegregation plans, and the decision to remand in this case is consistent with those prior holdings. *Flax v. Potts*, 464 F.2d 865 (5th Cir.), *cert. denied* 409 U.S. 1007 (1972) (no justification for excluding first grade from Fort Worth, Texas plan); *Arvizu v. Waco Independent School Dist.*, 495 F.2d 499 (5th Cir. 1974); on rehearing 496 F.2d 1309 (1974) (no justification for not integrating grades 11 and 12); *Mills v. Polk County Board of Public Inst.*, 575 F.2d 1146 (5th Cir. 1978) (not proper to leave grades 1 and 2 segregated); *United States v. Texas Education Agency (Austin Ind. Sch. Dist.)*, 532 F.2d 380, 393 (5th Cir. 1976), (exclusion of grades 1-5 from plan not proper); vacated on other grounds 429 U.S. 990 (1976); but cf. *Lockett v. Board of Education of Muscogee County*, 447 F.2d 472 (5th Cir. 1971) (permitting omission of kindergarten from plan based on peculiarities of kindergarten program); see *Thompson v. School Board of City of Newport News, Virginia*, 465 F.2d 83 (4th Cir. 1972), (en banc), *cert. denied* 413 U.S. 920 (1973) (en banc) (remanding on issue of exclusion of grades 1 and 2); *contra Thompson v. School Board of City of Newport News*, 498 F.2d 195 (4th Cir. 1974) (en banc) (approv-

ing exclusion of grades 1 and 2 by 4-3 vote of Fourth Circuit.

The primary grades were left largely segregated by the failure to use either substantial rezoning or pairing techniques in any part of the school system at these grade levels. The categorical exclusion of these grade levels precluded any analysis of the circumstances of individual schools to weigh the feasibility of pairing or busing. The use of busing to integrate the primary grades was excluded notwithstanding the fact that in some areas primary school children might be integrated with relatively short bus rides. There is simply no record basis for a conclusion that the techniques used to integrate grade 4 and 5 would not be workable in the earlier grades. The DISD doesn't provide walk-in schools for every pupil in the primary grades. Some of the "neighborhood zones" are quite large in area as may be observed from an inspection of the elementary attendance zone maps, and pupils who live more than two miles from school are provided transportation. Nearly 5,000 pupils were provided free transportation by school bus or otherwise in the DISD prior to this case. 1971 Tr. 452. Primary grade pupils are transported in the DISD; they are just not transported for desegregation purposes.

Swann indicates that decisions as to the use of busing for integration must be based on a principle of accomplishing as much desegregation as possible without interfering with the educational process or impairing the health of children. *Swann*, 402 U.S. at 29-

31. The Court in *Swann* understood that throughout the country large numbers of children of all age groups are bused to schools for reasons having nothing to do with desegregation. By indicating in the *Swann* opinion that the ages of children affect the practicalities of busing the Court did not endorse the wholesale exclusion of younger children from desegregation plans. *Swann, supra*, 402 U.S. 1, 29-31. The district court's only finding to justify the exclusion of primary grades was an agreement with Dr. Estes' bare assertion that K-3 children were not mature enough to be bused. 412 F.Supp. at 1204. Surely the Fifth Circuit stated an unexceptionable rule in holding that a district court must make more specific findings about time and distance or other similar matters which are asserted to justify one-race schools. 572 F.2d at 1014. There is not and could not be a finding in Dallas that time and distance considerations preclude all additional desegregation of the primary grade pupils.

The failure to desegregate the primary grades operates to weaken the entire process of desegregation. While we rely primarily on the case law cited above for our position, we do point out to the court that there is a strong consensus among social science students of desegregation that integration in the early grades has the most beneficial effects on the achievement of minority children. A very careful review of the literature on the effects of desegregation on

achievement by Robert Crain and Rita Mahard⁴⁰ led them to state that:

"A comparison of the 73 studies leads to one important conclusion: that desegregation is noticeably more likely to have a positive impact on black test scores if it begins in the earliest grades, and effects are especially likely to be positive for first grades."⁴¹

Robert Crain testified in the Dallas case about the great importance of desegregating the early grades. Tr. Vol. III p. 434. We reprint in the footnote below a long excerpt from the Crain and Mahard article which asserts that starting desegregation in early grades has noticeable advantages.⁴²

⁴⁰ Robert Crain and Rita Mahard, "Desegregation and Black Achievement," *Law & Contemporary Problems*, Vol. 42 (Spring and Summer 1978) (Publication forthcoming; also published as a working paper of the National Review Panel on School Desegregation Research, Institute of Policy Sciences and Public Affairs, Duke Univ.).

⁴¹ *Id.* at "Abstract".

⁴² Crain and Mahard, *op. cit.*:

"Age at First Desegregation"

The review of these studies is inconclusive or debatable on nearly every point except that desegregation in the early grades is superior to desegregation in the later grades. Of the studies we have reviewed, 13 found a more positive impact for those students desegregated in earlier grades. Only 3 have found the opposite and these 3 seem to be explainable. Beker's study in Syracuse was a tiny sample—his control group contained only 23 students, which can hardly be sorted by grade to get meaningful results. A second case where a positive finding was found for a

higher rather than a lower grade was in Evans' study of the first year of desegregation in Forth Worth, but his own follow-up a year later reversed this conclusion. The third case of a more positive finding in the upper grade is in the Dade County study referred to earlier, but this seems to be explained not by the high performance of upper-grade students in white schools, but by a rather dramatic drop in the performance of the upper-grade students in segregated schools, whose achievement went down about a third of a year over the preceding year's class even though black achievement in other grades went up. The 13 positive findings are methodologically stronger. Included are the two northern experimental designs by Mahan and Zdep as well as the seemingly well done study by Schellenberg. Even some studies whose overall effects are zero show positive results in early grades. St. John and Weinberg report three other studies in which stronger results occurred in the lower grades and both reviewers conclude that desegregation in early grades is preferable.

In a final test of the hypothesis we compared the outcome of desegregation reported in the different studies depending on which grades were tested. These results also indicate that early-grade desegregation is more successful. Of twelve studies of desegregation at the junior high school and high school level, five show negative effects, while none of ten studies done in the first and second grade show negative results. Table 4 presents the data for the southern and northern halves of the sample we have reviewed, and as well as the data for 21 studies reviewed by Weinberg and St. John but not by us. All three samples support the hypothesis.

The table suggests that the critical point is around the 2nd and 3rd grade, since only 9 of the 21 cases of desegregation in grades 3 or 4 showed positive results. The poor outcomes of desegregation for third and fourth graders is suggestive, since these grades are in the center of an age range which Michael Inbar has called "vulnerable age." Inbar (1976) found that persons migrating to Israel between the ages of 6 and 11 were less likely to later attend college than those who came at either younger or older ages. He has replicated this result using migration to Canada and regional migration within the United States.

We submit that there is no more justification for the failure to adequately desegregate the high schools than there is with respect to primary grades. There has not been a *bona fide* high school desegregation effort in Dallas. The Fifth Circuit's 1975 opinion held that the 1971 plan was an unsatisfactory minimal effort to get the one-race schools slightly under the 90% point. 517 F.2d at 104. Yet that 1971 plan remains essentially intact today, with the addition of Magnet schools in 1976 being the only real change. That badly flawed 1971 effort failed to achieve even its limited objective when only 50 of 1,000 White pupils, who were assigned to all-Black schools in an effort to get the schools into the 80-90 percent black range, actually attended the Black schools. Ironically Judge Taylor cites the failure of the weak 1971 effort, which the Fifth Circuit had held not be *bona fide*, as his reason for not attempting any further high school desegregation in 1976. 412 F.Supp. at 1205. Judge Taylor concluded from this experience that anti-bus-

Crain and Weisman (1972) found a similar pattern for blacks who migrated from the south to the north at this age. Inbar quotes Harry Sullivan (1953) as theorizing that the elementary school years are an important period of establishing social relationships and recommending that social relationships not be disrupted in this time. If this theory is correct, the kind of social migration which occurs as a result of desegregation may have effects analogous to geographic migration.

It has been widely argued that desegregation should begin in the early grades. It is gratifying to see the data support our conventional wisdom so clearly, although if the Inbar finding is relevant, even third grade may not be early enough.

ing sentiment was so strong that only a voluntary Magnet Plan would be effective in Dallas to eliminate the high school segregation. *Id.* at 1205, n.50.

The Fifth Circuit criticized the failure of the 1976 plan to desegregate high schools (572 F.2d at 1014):

Of particular concern are the high schools that are one race. Although students in the 4-8 grade configurations are transported within each sub-district to centrally located schools to effect desegregation, the district court's order leave high school students in the neighborhood schools. Within three of the four integrated subdistrict,¹³ this results in high schools that are still one-race schools.¹⁴

¹³ This excludes East Oak Cliff, the black sub-district, and Seagoville, and the one predominately Anglo subdistrict.

¹⁴ In the Northwest subdistrict, one high school is 95% minority and two high schools are 96% Anglo. In the Northeast subdistrict, one high school is 99.8% minority and one is 95% Anglo. In the Southeast subdistrict, one school is 100% minority and one is 89% Anglo.

The point made by the court of appeals is a cogent one. It seems obvious that, if a feeder plan can effectively desegregate the 7th and 8th grades in parts of the city, a comparable feeder plan could integrate the same students in grades 9-12. If anything, desegregation of the high schools should be more feasible because the high school buildings have larger pupil capacities than the schools serving lower grades, and

consequently can serve broader geographic areas.⁴³ Larger schools serving broader areas are readily adaptable to serving more heterogeneous student populations. And, of course, many high school students go to school in their own automobiles, bicycles and public transportation. 1971 Tr. 684-685, 983-984. In the Statement, *supra* at Part IV we have explained the manner in which pupils at Carr school, a minority school in the Northwest subdistrict, are segregated in an all-Black school in grades K-3, desegregated in grades 4-6 in Burnet School and in grades 7-8 at Walker, and then are segregated again at Pinkston High School. The treatment of Carr typifies the plan's treatment of minority schools in the center of the city.

The Fifth Circuit directed that the district court reevaluate the effectiveness of the Magnet concept noting that the NAACP brief on appeal quoted Dr. Estes as having conceded its ineffectiveness. 572 F.2d at 1015, n.15. At the 1976 trial Dr. Estes estimated that at the beginning about 2,500 pupils would attend Magnet schools. Tr. Vol. I. 247. The DISD Brief in the Fifth Circuit advised that in fall 1976 the four Magnet high schools enrolled 3,688 pupils (including part time). DISD Br. 5th Cir. No. 76-1849, p. D-13.

⁴³ See capacity figures in App. A to Final Order; Pet. App. No. 78-253, 84a et seq. We calculate that the median high school building capacity for the 19 high schools listed in the appendix is 2,100 students. The range is from 750 at Seagoville to 4,000 at Skyline. The capacity of South Oak Cliff was expanded to 4,000 under the plan by housing 1,400 of its 9th graders at the former Zumwalt junior high building.

The April 1979 DISD report to the District Court indicates 3,456 pupils attending Magnet high schools.⁴⁴ Thus, the actual experience with Magnet schools in the three years the 1976 plan has been implemented indicates that the Magnet schools involve only a small percentage of the pupils. The 1979 total of 3,456 is approximately 8.7% of the total high school enrollment of about 39,734. Given the very limited impact of the Magnet program, the Fifth Circuit remand for an evaluation of other assignment alternatives was required by *Green v. County School Board*, 391 U.S. 430 (1968). Magnet schools are a form of free choice in pupil assignments. When a plan relies entirely on Magnet schools to eliminate a dual system it must be evaluated in terms of *Green's* holding:

"If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end."

Green, supra, 391 U.S. at 440.

After three years the plan has resulted in continuing extensive racial isolation of Black high school pupils. The DISD's April 1979 report to the district court indicated that there were 8 high schools enrolling less than 10% Anglo pupils; these 8 schools enrolled

⁴⁴ In addition to the small numbers of pupils, there is only slight desegregation at the Business Management Magnet which has but 9.5% Anglo pupils.

11,047 or 59.01% of the 18,718 Black high school students and only 90 Anglo pupils.⁴⁵

The Fifth Circuit's remand order was if anything too moderate. The court might properly have unequivocally directed the desegregation of all levels of the DISD system, and the high school plan which had been previously rejected in 1975 might have been repudiated in stronger terms than the court used in its opinion. In any event, the remand was amply justified by the failure of the DISD to use affirmative desegregation measures in more than half the grade levels in the system.

⁴⁵ The following table indicates the 1979 high school enrollments:

High schools — 1979									
Percentage of White Students	No. of Schools	White No.	Students %	Black No.	Students %	Hispanic No.	Students %	Other No.	Students %
90-100	1	2,180	13.91	106	.57	87	2.	39	10.77
80-89	1	2,555	16.3	144	.77	202	4.64	161	16.85
70-79	3	3,104	19.8	731	3.91	174	4.	36	9.95
60-69	0	0	0	0	0	0	0	0	0
50-59	4	5,059	32.27	3,159	16.88	1,014	23.29	100	27.62
40-49	4	1,913	12.2	869	4.64	1,258	28.9	65	17.96
30-39	1	90	.57	174	.93	33	.76	0	0
20-29	1	60	.38	154	.82	44	1.01	1	.28
10-19	3	625	3.99	2,334	12.47	1,121	25.75	48	13.26
1-9	2	64	.41	1,983	10.59	380	8.73	8	2.21
Less than 1%	6	26	.17	9,064	48.42	40	.92	4	1.1
Total	26	15,676	100	18,718	100	4,353	100	362	100
% of Total		40.08		47.86		11.13		.93	

Source: This table is derived from data in the April 15, 1979 DISD Report to the District Court.

B. The District Court Erred in Establishing the Segregated East Oak Cliff Subdistrict.

The creation of one all-Black and five majority White subdistricts had a drastic negative impact on the desegregation of the DISD. This feature of the plan also justified the court of appeals' action in remanding for a new plan because it excluded a projected 26,202 (41.74%) of the system's 62,767 Black students from the desegregation process. Pet. App. No. 78253, 84a. The establishment of an all-Black East Oak Cliff subdistrict was segregatory on its face. When the plan was ordered the DISD was 42.1% Anglo, 44.5% Black and 13.4% Mexican American. Pet. App. No. 78-253, 84a. The carving out of the East Oak Cliff subdistrict transformed the balance of the DISD into a majority Anglo system, and desegregation was limited to the area thus established. The remaining area was projected by the court to be 51.3% Anglo, 32.5% Black and 16.2% Mexican American, while the East Oak Cliff district would be 1.9% Anglo, 95.3% Black, and 4.7% Mexican American.⁴⁶ *Ibid.*

The district court justified the decision to create an all-Black subdistrict by a generalized reference to "practicalities of time and distance":

The Court is of the opinion that, given the practicalities of time and distance, and the fact that

⁴⁶ The calculation excluded Seagoville. The remaining area including Seagoville was projected at 51.88% Anglo, 32.18% Black and 15.93% Mexican American. Pet. App. No. 78-253, 84a.

the DISD is minority Anglo, this subdistrict must necessarily remain predominantly minority or black. 412 F.Supp. at 1204.

But the court failed to make specific findings about the times and distances which would be involved in integrating the Oak Cliff schools or to supply any details to demonstrate what "practicalities" required that every one of the 26 all-Black schools in East Oak Cliff remain all-Black. The court of appeals was particularly justified in a remand for more findings on this point in view of the plaintiffs offer of two plans which would have provided much more integration in Oak Cliff. Plaintiffs' Plan A outlined a method to desegregate all of the schools with 45 minute maximum bus trips and Plan B would have desegregated all but 11 of the Oak Cliff schools with 30 minute maximum bus trips.

The governing principle was stated by the Court in *Green v. County School Board*, 391 U.S. 430, 439 (1968) when the Court held that where more promising courses of action are available there is a heavy burden to explain "a preference for an apparently less effective method." The district court's conclusory comments about the impracticality of desegregating Oak Cliff are not sufficient to validate such extensive segregation involving more than 40% of the Black students in the DISD.

The proponents of the plan to leave over 40% of the DISD's Black pupils in one-race schools in East Oak Cliff, had the heavy burden of overcoming "a

presumption against schools that are substantially disproportionate in their racial composition". *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26 (1971). The petitioners failed to demonstrate that the plan to establish an entire subdistrict of one-race schools was "genuinely nondiscriminatory". *Ibid.* In remanding for additional findings the Fifth Circuit performed its duty to "scrutinize such schools" and to place "the burden upon the school authorities . . . to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part." *Ibid.*

The petitioners argue that the Oak Cliff schools need not be desegregated because they changed from all-White to all-Black schools since desegregation began. This argument is flawed on several grounds. First, it simply is not true as to many of the East Oak Cliff Schools. Among the East Oak Cliff schools, are a number which were all-Black in the early 1960's.⁴⁷ Dr. Estes' list of schools which had changed from White to Black since 1965 included only 12 of the 26

⁴⁷ Nine East Oak Cliff subdistrict schools which had all-Black faculties in the pre-1965 period are Roosevelt, Ervin, Stone (converted from White to all-Black faculty), Darrell, Harlee, Johnston, Miller (converted to Black), Mills (converted to Black), Pease (converted to Black). See note 10 *supra*. The conversion of faculties from all-White to all-Black was a clear *de jure* act of segregation which may be presumed to have had a serious impact on the schools as well as the surrounding neighborhoods. A number of the other schools in the area were opened since 1965, and were either opened as all-Black schools or became all-Black shortly thereafter.

schools in the East Oak Cliff subdistrict. See note 14 *supra*. Second, the change of schools from White to Black did not occur in the context of a unitary system. Most of the changes occurred prior to the filing of the lawsuit when the DISD plainly had not dismantled the dual system and the remainder during the pendency. The most the DISD proved was that a number of schools which were once all-White became all-Black in neighborhoods of changing racial populations. There was no showing that such schools were desegregated as part of a unitary system. See Argument I, *supra*. The changes which occurred between the filing of the suit and the 1976 trial were still not in a desegregated unitary context, because there was no elementary school desegregation under the 1971 order and the secondary level integration was minimal and inadequate as the Fifth Circuit held in the 1975 opinion. 517 F.2d 92. The school district may not avoid its duty to desegregate by relying upon demographic changes in schools which took place during the operation of a dual system or which may have resulted from the board's inadequate efforts to desegregate. *Keyes, supra*; *United States v. Board of Education of Valdosta, Georgia*, 576 F.2d 37,38 (5th Cir.), *cert. denied* 99 S.Ct. 622 (1978).

The establishment of the new East Oak Cliff subdistrict, along with a rule that pupils would only be assigned to schools in the subdistrict where they lived, created a new impediment to desegregation by institutionalizing the segregation of the Black schools

of the southern DISD into a separate administrative unit. For desegregation purposes the DISD was transformed from a single unit which was 42.1% Anglo, 44.5% Black and 13.4% Mexican American, into two new units, one of which consisted of several parts which, in the aggregate were 51.3% Anglo, 32.5% Black and 16.2% Mexican American. The other unit, East Oak Cliff, would be 1.9% Anglo, 95.3% Black, and 4.7% Mexican American. Pet. App. No. 78-253, 84a. Carving out the new sub-unit hinders the process of desegregation in a manner not dissimilar in its effect to the creation of the splinter districts which the court disapproved in *United States v. Scotland Neck Board of Education*, 407 U.S. 484 (1972) and *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972). Creation of the East Oak Cliff sub-district precludes meaningful desegregation of that area and should be condemned on the reasoning of *Scotland Neck* and *Wright, supra*. The fact that the new sub-unit has no independent governmental status removes from the case one of the factors which divided the Court in *Wright*. Compare the dissenting opinion of the Chief Justice in *Wright, supra*, 407 U.S. at 471 with the concurring opinion of the Chief Justice in *Scotland Neck, supra*, 407 U.S. at 491.

III. The Arguments of the Brinegar and Curry Petitioners for a Modification or Overruling of *Swann* should be rejected.

A. The Brinegar and Curry Arguments that Certain Neighborhoods must be Exempted from Participation in a Desegregation Plan are without Merit.

The Brinegar petitioners representing neighborhoods in East Dallas argue that the Court should rule that desegregated neighborhoods are not "vestiges of the dual system" and accordingly that pupils living in such areas may not be reassigned or transported as part of a desegregation plan. Pet. Br. No. 78-283, pp. 35 et. seq. The Curry Petitioners representing an Anglo North Dallas area contend that no action of the DISD has been found to have caused their area to be all-White, and accordingly no remedy should apply to North Dallas. Pet. Br. No. 78-282, p.30. The essence of the position of both groups is an objection to having minority children bused to the schools in their areas.

This Court's decision in *Keyes v. School District No. 1*, 413 U.S. 189 (1973) held that in a system without a history of statutory segregation, proof of intentional segregation involving a substantial portion of the school system was sufficient basis to require a system-wide remedy. The principle was reaffirmed in *Columbus Board of Education v. Penick*, ___ U.S. ___, (July 2, 1979) and *Dayton Board of Education v. Brinkman*, ___ U.S. ___ (July 2, 1979) (*Dayton II*).

Columbus rejected an argument that *Keyes* had been implicitly overruled, and applied its principle to affirm a systemwide desegregation order. Slip opinion at 7, n.7, 14-17. See also *Dayton II*, slip opinion at 13-14.

The principles of *Keyes* apply *a fortiori* to a statutory dual system such as Dallas. Both the East Dallas and North Dallas areas were parts of the dual system which had not been dismantled when the suit was filed. No separate administration existed for either geographical area. The district court must have flexibility to include schools in any part of the system in a remedy to make it workable and effective. *Swann* calls for systemwide remedies to dismantle dual systems. It would be defeated by a doctrine such as petitioner Curry urges which would handcuff the district court and require it to recognize, or indeed to create, havens for white flight within the system. In *Swann* the court approved a modification of the school board's high school plan which was suggested by the court's expert consultant for the purpose of integrating the all-White Independence High school so it would not become a refuge in which pupils might avoid desegregation. *Swann*, *supra*, 402 U.S. 1, 8-9. Such flexibility should be preserved in Dallas.

If the school attendance zones of the East Dallas area are truly integrated a satisfactory plan may well be evolved which avoids transporting pupils to or from such areas. That may well be the efficient and sensible way to arrange the plan. But desegregation planners ought not be constrained in advance that

such neighborhoods may not ever participate in pairing, grouping, rezoning or other affirmative desegregation steps, because that would induce a rigidity into the situation which might well prevent the most efficient and practicable plan to eliminate one-race schools in other areas of the city.

B. The Curry Petitioners' Argument for an Overruling of *Swann* should be rejected.

Respondents disagree with virtually every assertion in Part III of the Curry Argument which calls on the court to overrule *Swann*. However we make no point-by-point rebuttal to the argument in this brief because the Court has no recently reaffirmed *Swann* last term in the *Columbus* and *Dayton II* decisions. Arguments similar to the Curry attack on busing as a remedy failed to command a majority of the Court. See the dissenting opinion of Mr. Justice Powell in *Columbus* and *Dayton II*. We refer the Court to the careful and detailed statement signed by 38 social scientists stating the current social science evidence on school desegregation, its relationship to residential segregation, and the current state of knowledge about the desegregation process which was submitted to the Court last term in *Columbus*. Brief for Respondents in No.78-610, App.1a-28a, "School Segregation and Residential Segregation: A Social Science Statement". With regard to the "white flight" issue see also the excellent summary of the research by Christine Rossell, "The Community Impact of School Desegregation: A Review of the Literature." Law and

Contemporary Problems, Vol. 42, No. 2 (Spring 1978) (Publication forthcoming. Originally presented to the National Review Panel on School Desegregation Research, Oct. 1977). With regard to academic achievement issues see Crain and Mahard, op. Cit. *supra* n. 40.

At the trial respondents called witnesses to rebut the social science testimony offered by the Curry group. The testimony summarized at pages 33-39 of the Curry brief was contradicted on virtually every point by respondents' witnesses Dr. Robert L. Crain, Senior Social Scientist for the Rand Institute, Tr. Vol. VIII 408 et seq.; Dr. Karl E. Taeuber, Prof. of Sociology University of Wisconsin, Tr. Vol. IX 126 et seq.; and Dr. Joe R. Feagin, Prof. of Sociology University of Texas at Austin, Tr. Vol. IX 318 et seq.; see also testimony of Dr. Charles L. Evans, Director of Research Program Evaluation, Fort Worth Independent School District, Tr. Vol. IX 285 et seq. Judge Taylor made no findings as to the merits of the Curry expert evidence. The soundness and reliability of much of the Curry testimony was strongly challenged by plaintiffs witnesses,⁴⁷ but the district court made

⁴⁷ For example, Robert Crain described one study by David Armor, a Curry witness also employed at the Rand Corporation as "bizarre, dumb" and "a very weak design". Tr. Vol. VIII 445, 447. Karl Taeuber described James Coleman's white flight study as not a sound and reliable statistical analysis. Tr. Vol. IX 152. He found another David Armor study characterized by both arithmetic errors and questionable scientific procedures. *Id.* at 182-185.

no effort to resolve the conflicts. See 412 F.Supp. at 1205, n.50. We believe that the district court was correct in not attempting to make a detailed analysis of the highly partisan educational and sociological testimony offered by the Curry group in support of their anti-busing thesis. Both courts below understood that they remain bound by *Swann* and that it ought not be lightly ignored or set aside on the basis of highly debatable social science and educational theories.

This Court's decision in *Green* and *Swann* brought a sensible pragmatic approach to desegregation of *de jure* segregated school systems. The real testimony to the workability and effectiveness of these doctrines is the fact that the schools of the southeastern part of the country, are now less racially segregated than those in any other region of the nation. U.S. Commission on Civil Rights, DESEGREGATION OF THE NATION'S PUBLIC SCHOOLS: A STATUS REPORT, p. 20 (Feb. 1979). The Fifth Circuit should be encouraged in its efforts to observe the principles of *Swann* with scrupulous care, because the same STATUS Report emphasizes that much remains to be done to bring about full compliance with *Brown v. Board of Education*.

CONCLUSION

For the foregoing reasons respondents respectfully submit that the judgment of the Court of Appeals should be affirmed.

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Supreme Court of the United States MURPHY, JR., CLERK

OCTOBER TERM, 1978
No. 78-253; 78-282; 78-283

NOLAN ESTES, et al.,

Petitioners,

—versus—

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and

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—versus—

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OAK CLIFF BRANCH, SOUTH DALLAS BRANCH and JOHN F.
KENNEDY BRANCH of the Metropolitan Branches of
Dallas, NAACP,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF NAACP RESPONDENTS

Questions Presented

1. Whether a school desegregation plan for a district that was found to be segregated by state law, and that has never yet eliminated its racially dual system, is adequate when it fails to make any significant effort to desegregate the student enrollment in its high schools, its early elementary schools, or any of the schools in a virtually all-black sub-district, except through provision for voluntary transfers and a partial system of magnet-type schools?

2. Whether the Court of Appeals properly exercised its appellate review by remanding the District Court's order because it failed to either eliminate or expressly justify the large number of one-race schools under the Dallas desegregation plan?

Summary of Argument

I.

The projected operation of the Dallas desegregation plan implemented under the District Court's order shows such a substantial degree of continuing segregation in student enrollment and such a large number and high proportion of one-race schools—at least 70 out of 172—as to make it necessarily inconsistent with the disestablishment of Dallas' previously state-imposed racially dual system.

The failure of the plan to achieve substantial desegregation of the high schools, early elementary schools, or any of the schools of the East Oak Cliff sub-district is in sharp contrast to the significant desegregation that is achieved in grades four through eight in the areas out-

side the all-black East Oak Cliff sub-district. This contrast highlights the fact that the same desegregation techniques that have been effective in grades four through eight are available as feasible remedies for the state-imposed segregation in the other grade levels and areas of the school district in the absence of any findings as to their infeasibility in specific instances.

The reason for the lack of effective desegregation in the high schools and the East Oak Cliff area is that the pattern of initial segregated student assignments is maintained and the opportunities for desegregation rest solely on what is basically a transfer policy—majority-to-minority transfers and transfers to magnet schools. These techniques in themselves have long been held impermissibly inadequate to dismantle the continuing effects of a dual system of student enrollment. Much the same is true of the nature of the failure to desegregate the early elementary grades, except that in those grades the magnet-type schools are not even included as a supplementary desegregation device.

Desegregation in these aspects of the Dallas school system has been essentially written off by the District Court without any sufficient justification and without focussing specifically enough on particular questions of the feasibility of using the kinds of techniques approved in *Swann* and used with effectiveness in other aspects of the Dallas plan itself. Rather, the district court assumed that white students would not attend minority schools, or in general terms assumed the techniques were not workable or would interfere with certain educational objectives. All of these reasons are either impermissible or based upon assumptions that were not clearly spelled out or established.

The Dallas system of dual attendance has not yet been effectively disestablished since the time it was mandated by state law. The Court of Appeals' remand is necessary in order to focus the attention of the school officials on the remaining task and require them and the District Court to look more closely at the feasibility of using the *Swann* techniques to effectively enforce the constitutional rights of minority students to attend public schools in a nonracial, unitary system.

II.

In remanding this case for consideration of a new plan and for specific findings concerning the infeasibility of eliminating any remaining substantially one-race schools, the Court of Appeals was properly insisting on adherence to the decisions of this Court. This is a proper and important function of the courts of appeals and a part of the particular tradition of the Court of Appeals for the Fifth Circuit. To fail to affirm the Court of Appeals in this case would seriously undermine the function of that court and its role in our federal judicial system.

Responsible appellate review of the district court order in this case could have led only to the remand of this plan in light of the standards previously set by this Court, and the clear disregard of those standards by the District Court.

ARGUMENT

I.

The Dallas Desegregation Plan Is Facially Inadequate to Eliminate Segregated Student Enrollments in a School System That Was Segregated by State Law and That Has Never Yet Been Brought Into Constitutional Compliance by Achieving a Non-Racial, Unitary School System.

A. *The Projected Operation of the District Court's Desegregation Plan Shows That It Will Not Dismantle the Dual System of Racially Identifiable Schools as Required by This Court's Prior Decisions and to the Extent That the Plan Itself Shows Is Practical and Feasible in Dallas.*

The two basic facts that most boldly stand out in this case are the contrasting degrees to which the District Court's desegregation plan both fails and succeeds in desegregating student enrollment at different levels of the Dallas school system.

For those grade levels and areas where no real attempt is made to desegregate the regular attendance area schools—the high schools, the early elementary schools (K-3), and the entire all-black East Oak Cliff sub-district—the continuing segregation is stark. Based on the projections attached to the District Court's April 7, 1979 Final Order (Estes Pet. for Cert. 53a, at 85a-119a) and subsequent modifications (*Id.* at 121a-129a), over 83 percent (40 out of 48) of the early elementary schools (K-3),¹ and 50 percent (9

¹ These figures for the K-3 grade schools necessarily include only those schools which contain *only* grades K-3 since those are the only schools for which racial and ethnic enrollment projections were furnished under the district court's plan. Many K-3 grades are combined with 4-6 grade intermediate schools, for which racial and ethnic enrollments are given in grades 4-6, but not in grades K-3. Since the intermediate schools were to be largely desegregated

out of 18) of the regular attendance area high schools,² are one-race or virtually one-race schools whose student bodies are comprised of approximately 90 percent Anglo or 90 percent minority students.³ Even when the all-black East Oak Cliff sub-district is omitted from these figures, the degree of segregation, as measured by the proportion of one-race schools in the four "racially proportioned" sub-districts, is not significantly changed—82 percent (36 out of 44) of the separate K-3 schools and 44 percent (7 out of 16) of the regular attendance area high schools. In the East Oak Cliff sub-district, all four of the K-3 schools, all four of the 7-8 middle schools, both of the regular attendance area high schools, and 15 of the 16 intermediate schools (grades 4-6)⁴ were expected to have at least 98 percent mi-

under the plan, but the early elementary grades were not, the figures for the 4-6 grades bear no relationship to the racial composition of the K-3 student body in the same school.

² These include all the senior high schools of grades 9-12 based on the projected enrollments in the District Court's Final Order which were intended to be the comprehensive high schools for their respective specified neighborhood attendance areas. Magnet high schools with specialized programs (for which no reliable racial and ethnic enrollments were, or could reliably be, given) are not included. Any integration that might occur in the magnet high schools themselves would not significantly affect the over-all amount of high school desegregation achieved, and would itself have no effect on the racial composition of the regular attendance area high schools.

³ This definition is the same as that used by the Court of Appeals in this case, in which it defined a one-race school as "a school that has a student body with approximately 90% or more of the students being either Anglo or combined minority races," but with an admonition that "the 90% figure is not a 'magic level below which a school [will] no longer be categorized as 'one-race.'"⁵ *Tasby v. Estes*, 572 F.2d 1010, 1012, n. 3 (5th Cir. 1978). *Estes* Pet. for Cert. 132a. In compiling the figures in this Brief, the actual cut-off point used was 88 percent Anglo or minority.

⁴ One of the 15 black intermediate schools, Maynard Jackson, was designated as a Vanguard school with 300 student stations reserved for integration purposes. According to the DISD's December 15, 1976 Report to the District Court, the Jackson School

nority enrollment. In fact, all of these East Oak Cliff one-race schools are at least 89 percent black, and all but two of them are at least 97.5 percent black. *Estes* Pet. for Cert. 113a-117a.

By contrast, however, the District Court's plan did show the promise of largely eliminating at least the 90 percent or more Anglo or minority school enrollments in those grade levels and areas where it tried to do so. Based again on the projections attached to the District Court's Final Order (*Estes* Pet. for Cert. 85a-111a), none of the middle schools (grades 7-8) and only two⁵ of the 66 intermediate schools (grades 4-6) contain approximately 90 percent or more minority or Anglo enrollments in those sub-districts aside from East Oak Cliff.⁶ These are the grade levels and areas

was 98.8 percent black during the first year of the plan. The most recent DISD Report to the District Court (April 1979) shows that Jackson remains as a one-race school with 98.3 percent black enrollment.

⁵ The K. B. Polk School in the Northwest sub-district is not included in these figures as a one-race intermediate school despite the fact that its projected and actual present status are somewhat unclear in the Record. In the April 7, 1976 District Court order Polk was projected to have a totally black enrollment except for the reservation of 300 student stations for integration under the Vanguard concept. *Estes* Pet. for Cert. 86a. The DISD's April 1979 Report to the District Court indicates a Vanguard enrollment of 119 students, of whom 66 percent are Anglo. The Report also indicates that the total intermediate enrollment (grades 4-6) is 272. Thus, there appear to be 152 non-Vanguard students in grades 4-6 at the Polk School, all of whom are minority students. It thus appears that Polk has a regular intermediate program that is all-minority and a Vanguard program that is majority Anglo. The K-3 grades are virtually all-black, as reflected in the figures of the DISD's April 1979 Report.

⁶ Seagoville, the only predominantly Anglo sub-district, is essentially omitted from the plan. None of the grade structures for its four schools are conformed to the standardized grade structures of the rest of the school district. Racial and ethnic enrollment comparisons at the standardized grade levels are therefore not available, and the four Seagoville schools cannot be included in the above figures.

where the plan specifically assigns students for the purpose of dismantling the segregated student enrollment patterns that mark schools as "Anglo" or "black" or "Hispanic"—schools which had remained so marked in Dallas ever since segregation was initially mandated by the statutes of Texas. *Bell v. Rippey*, 146 F.Supp. 485, 487 (N.D. Tex. 1956); *Tasby v. Estes*, 342 F.Supp. 945, 947 (N.D. Tex. 1971), *revd. on other grounds*, 517 F.2d 92 (5th Cir. 1975), *cert. den.* 423 U.S. 939 (1975).

The difference between the failure and the effectiveness of the plan shows itself in two ways: (1) by comparing the decreased number of clearly one-race schools in grades 4-8 with the high degree of remaining segregation of the grade levels immediately above and below them in the very same districts, and (2) by comparing the almost total segregation remaining in the East Oak Cliff sub-district, where no significant desegregation attempt was even made, with the decreased number of clearly one-race schools in grades 4-8 in those districts where the attempt was made. The differences are more graphically illustrated in the table on the next page.

Sub-Dist.	Grades K-3			Grades 9-12			Grades 4-6			Grades 7-8		
	No. of Schls.	No. of 1-Race Schls.	% of 1-Race Schls.	No. of Schls.	No. of 1-Race Schls.	% of 1-Race Schls.	No. of Schls.	No. of 1-Race Schls.	% of 1-Race Schls.	No. of Schls.	No. of 1-Race Schls.	% of 1-Race Schls.
N.W.	19	16	84%	5	3	60%	16	0	0%	5	0	0%
S.W.	27	2	100%	4	0	0%	26	1	4%	5	0	0%
N.E.	13	12	92%	4	2	50%	15	1	7%	3	0	0%
S.E.	10	6	60%	3	2	67%	9	0	0%	3	0	0%
Total	44	36	82%	16	7	44%	66	2	3%	16	0	0%
East Oak Cliff	4	4	100%	2	2	100%	16	15	94%	4	4	100%

⁷ All but two of the K-3 schools in the Southwest sub-district are combined with the 4-6 grades in the same respective schools, so that the figures for this district are not necessarily representative. Of the 26 schools in that sub-district, which combine grades K-6, only 2 were 90 percent or more Anglo or minority at the time of the DISD's Report to the Court on December 1, 1975. These figures are included in the DISD's "Answers to Interrogatories (First Set) of Strom, et al, Intervenor," which is a part of the Record in this Court as Exhibit "M" from the 1975-1976 District Court Hearings.

The degree of effectiveness in eliminating 90 percent Anglo and minority enrollments in grades 4-8 where the attempt was made, makes the overall number and proportion of one-race schools in Dallas even more questionable. Based on the racial and ethnic enrollment figures that are given as projections in the District Court's April 7, 1976 Final Order for those schools for which the statistics are available, 70 out of 172 schools in the DISD are all or predominantly one-race schools—41 percent. Of the 53,351 black students who were projected to be enrolled in those schools, 34,150—64 percent—were projected as enrolled in schools with approximately 90 percent or more minority enrollment.

Such statistics on one-race schools cannot, of course, tell the entire story of a school desegregation plan. The need to define one-race schools by a cut-off point—90 percent or 88 percent—can itself mask a large number of other essentially one-race schools that may lie just below the cut-off point. For example, the four early elementary schools (K-3) in the Southeast sub-district are all virtually segregated white schools having between 85 and 87.4 percent Anglo student bodies. *Estes Pet. for Cert. 99a*. If these were counted as one-race schools, the proportion of one-race schools for separate K-3 schools in the Southeast sub-district would be 100 percent rather than 60 percent. This illustrates the importance of going beyond the one-race school statistics to examine the actual amount of desegregation in various school enrollments.

Another problem is the lack of racial or ethnic statistics for the projected enrollments of those K-3 schools that are included within a K-6 school. Since the one-race schools in grades 4-6 have been largely eliminated by student assignments under the plan (except for East Oak Cliff), but similar techniques have not even been attempted for grades K-3, one would expect that many of the K-3 grades may

represent one-race schools for those grades even though included within one school along with the desegregated intermediate grades (4-6).

This problem can be illustrated by the Reilly School (K-6) in the Northeast sub-district. This school was at first designated in the plan as a separate K-3 school with a 92.9 percent Anglo enrollment (*Estes Pet. for Cert. 92a*). A later modification of the plan corrected its designation to that of a K-6 school, showing its enrollment for grades 4-6 as 55.8 percent Anglo and 44.2 percent minority—an apparently integrated intermediate school. *Estes Pet. for Cert. 123a*. It is only because of the initial misdesignation of the Reilly School as a separate K-3 school that the Record indicates the one-race nature of the early elementary grades in what otherwise appears to be a desegregated school. Similar information is not available for the other K-3 grades where they are included in a full K-6 elementary school.

While all of these statistics cannot tell the full story, they do point clearly to the fact that the state-mandated patterns of segregated student enrollment have not yet been dismantled. This is particularly true where the failure—in the high schools and early elementary schools and in the maintenance of an entire all-black sub-district—lies side-by-side with a demonstration of the possibility that desegregation *can* be made effective in the same grade levels and in the same sub-districts where those failures occurred because the same techniques were never tried.

Dallas clearly has not converted its dual system "to a system without a 'white' school and a 'Negro' school, but just schools." *Green v. County School Board*, 391 U.S. 430, 442 (1968); cf. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26, *reh. denied* 403 U.S. 912 (1971). At the very least, these figures demand the closer scrutiny

and justification that the Court of Appeals required in this case.

B. Effective Desegregation Techniques Are Available and Required in Order to Achieve a Non-Racial Unitary System Throughout the DISD.

The amount of continuing segregation in the Dallas school system shows the failure of the plan, as projected, to eliminate the dual school attendance patterns in the district. The particular areas of failure under the Dallas plan are constitutionally inadequate both because they rely solely upon out-dated desegregation techniques that may have sufficed at an earlier time as the "first steps" toward a desegregated system but are wholly inadequate today, and because they ignore effective techniques that are working in neighboring areas of the district or in neighboring grade levels of the Dallas system itself. The early elementary schools, all of the regular attendance area high schools, and the East Oak Cliff sub-district have been automatically written off. The fear that desegregation will cause "white flight" and that "white flight" will cause more segregation is used as an excuse to avoid desegregation in the first place. Efforts to achieve greater desegregation may well also be hampered by the fact that the integrative student assignments that *are* made are always from black and Hispanic areas toward Anglo areas, and never the other way around.

It is little wonder that the Court of Appeals found itself unable to approve the District Court's plan in the absence of specific findings concerning the feasibility of alternative and more effective means of desegregation.

1. The Senior High Schools.

One of the most difficult things to understand about the Dallas plan is its failure to carry the intermediate and middle school desegregation into the high schools. The

feasibility of using the elementary school attendance areas as a basis for assigning students to grades 4-8 to effectively achieve desegregation is demonstrated by the plan itself. Yet, for some unexplained reason, students who have been assigned to integrated schools for the fourth through the eighth grades are then dropped back into their neighborhood high schools, half of which are one-race schools.

Black and Hispanic students, for instance, who make up the C.F. Carr elementary attendance area in west central Dallas are assigned to the Burnet School in northern Dallas for grades 4-6, then farther north to the Walker School for grades 7-8. Estes Pet. for Cert. 87a, 89. Upon completion of the eighth grade, however, they return to their neighborhood Pinkston High School, which has a 95 percent minority enrollment. Estes Pet. for Cert. 90a. It takes more information than appears on the Record before this Court to see why it would not be feasible to give these students an integrated education at Hillcrest or W.T. White High Schools, both of which have a 96 percent Anglo enrollment, both of which are within the same general area and distance range as the schools at which the Carr students spent grades 4-8, and the first of which appears to have an enrollment of only 70 percent of its capacity (Pet. for Cert. 90a). Alternatively, there is no apparent reason why Anglo students in the areas where the Carr students attended grades 4-8 could not be brought down to Pinkston High School for an integrated education with the Carr students.

This same basic situation occurs time after time under the present Dallas plan. Minority students are assigned out of central and west central Dallas to integrated intermediate schools and middle schools for grades 4-8, and then sent back to segregated schools for their last four years. The following chart traces the progression of students in

such situations, showing the racial and ethnic composition for the K-3 attendance area (measured by the percentage of minority enrollment) and for each of the schools those students would attend through their graduation from high school:

K-3 Sch. & % Minority		Inter. Sch. & % Minority		Middle Sch. & % Minority		High Sch. & % Minority	
Carr	99%	Burnet	48%	Walker	48%	Pinkston	95%
Allen	91%	Caillet	60%	March	45%	Pinkston	95%
		Marcus	60%				
Arlington Park	98%	Caillet	60%	Rusk	44%	N. Dallas	83%
Carver/ Tyler	99% 100%	Foster	51%	Walker	48%	Pinkston	95%
		Pershing	60%				
		Walnut H.	41%				
Earhart/ Navarro	100% 100%	Longfellow	54%	Cary	48%	Pinkston	95%
		Williams	58%	Marsh	45%		
Travis	98%	Preston	59%	Spence	77%	N. Dallas	83%
		Hollow					
Hassell	100%	Bayles	46%	Gaston	43%	Madison	100%
Brown	100%	Conner	44%	Gaston	43%	Madison	100%
		Truett	47%				
City Pk.	96%	Lakewood	38%	Gaston	43%	Madison	100%
Colonial	100%	Reinhardt	42%	Gaston	43%	Madison	100%
Frazier	100%	Rowe	47%	Hood	40%	Madison	100%
Wheatley	100%	Sanger	46%	Hill	39%	Madison	100%
Harris	100%	Sanger	46%	Hill	39%	Madison	100%
Rice	100%	Reilly	44%	Hill	39%	Lincoln	100%
Thompson	100%	Ireland	37%	Florence	41%	Lincoln	100%
		J. Adams	42%				
Rhoads	100%	San Jacinto	49%	Hood	40%	Lincoln	100%
Dunbar	100%	Hawthorne	42%	Florence	41%	Madison	100%
		Blanton	43%				
Buckner	88%	Rylie	43%	Comstock	41%	Spruce	28%
		Burleson	42%				
		Dorsey	46%				

(The above information is taken from the District Court's Final Order, April 7, 1976, and subsequent modifications, as set forth in the Estes Pet. for Cert., at 85a-105a, 123a-124a, and 127a-129a.)

In all of these situations students are assigned to fourth through eighth grade schools outside their ordinary segregated neighborhood attendance areas and substantial desegregation is achieved. In every case, except for the last one listed, they are brought back to segregated high schools. It does not appear that the routes to integrated high schools would be any longer or less feasible than those already travelled to intermediate and middle schools. High school students should be at least as capable of participating in such a program as students of elementary and junior high school age. The building capacities seem to be generally available at the high school level (Estes Pet. for Cert., 90a, 97a, 104a), and even where present building capacities appear to be full, students could be exchanged without causing over-capacity problems.

The District Court's only findings to justify the omission of desegregated student assignments at the high school level did not go to the feasibility of the transportation involved, or to any lack of a constitutional requirement to desegregate them. Rather, the District Court concluded that such assignments would not work because Anglos would not go to minority schools. Estes Pet. for Cert. 34a.

The real reason for avoiding regular high school assignments on a non-segregated basis thus appears to be that white students do not want desegregation, at least if it means that they must attend schools that minority students have to attend, in areas where minority students have to go to school. This approach is constitutionally impermissible. It allows the constitutional rights of minority students to be defeated because of speculation about the feelings of white students. To make these minority rights dependant upon the cooperation of white students is itself racially discriminatory. This Court has long held that the vindication of constitutional rights cannot be avoided because of

disagreement with those rights. *Brown v. Board of Education II*, 349 U.S. 294, 300 (1955); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Monroe v. Board of Commissioners*, 391 U.S. 450, 459 (1968).

In *Monroe* the District Court had approved a desegregation plan that assigned students to schools on an initially desegregated basis, but allowed them freely to transfer back to their original segregated schools. The free transfer plan was defended as necessary to prevent "white flight" and preserve the public school system. In holding such a plan invalid as a device that in fact prevented the desegregation that is required by the Constitution, this Court stated:

[N]o attempt has been made to justify the transfer provision as a device designed to meet "legitimate local problems," . . . rather it patently operates as a device to allow *resegregation* of the races to the extent desegregation would be achieved by geographically drawn zones. Respondent's argument in this Court reveals its purpose. We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. "But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield because of disagreement with them." *Brown II*, at 300.

Monroe v. Board of Commissioners, 391 U.S. 450, 459 (1968).

The failure of the District Court to require any meaningful desegregation in one-half of the regular attendance area high schools in Dallas is comparable to the *Monroe* plan of making initial desegregated assignments and allowing everyone to transfer back. The difference is that in Dallas no initial desegregated assignments are made, so there is no need to transfer back. The essential similarity between the *Monroe* and Dallas plans is the purpose—and that pur-

pose has been held to be impermissible since it forecloses that possibility of desegregation from the catset.⁸

The District Court depreciated the importance of integrated high school assignments for minority students because of the opportunities to attend magnet schools or to take advantage of the majority-to-minority transfers. *Estes Pet. for Cert. 35a*. The fact of the matter is that the entire high school desegregation plan rests solely upon the magnet school concept and majority-to-minority transfers, which the District Court found to be the more practical and effective way to achieve high school desegregation. *Estes Pet. for Cert. 35a*.

In reality, high school desegregation in Dallas is based on a transfer system, and one that is less exacting and contains none of the safeguards of the freedom of choice desegregation devices that became obsolete at the time of *Green v. County School Board*, 391 U.S. 430 (1968). It is less than the old free choice plans because the initial assignments are made by the school system to segregated schools and students are allowed to transfer out on the basis of certain criteria—to attend a magnet school for special pro-

⁸ While the District Court purported to recognize that the *Brown II* "disagreement principle" applies to the fear of "white flight," and purported not to base its high school plan on findings of fact from any of the sociological evidence in this case concerning the effects of "forced busing" on white flight" (*Estes Pet. for Cert. 43a, fn. 50*), the court's citation to *Mapp v. Board of Education*, 525 F.2d 169 (6th Cir. 1975), *reh. den.* 527 F.2d 1388, *cert. den.* 427 U.S. 911, might suggest otherwise. Whatever might be said about the *Mapp* case, the plan in Dallas shows that desegregation cannot be achieved by avoiding it. The two schools in *Mapp* that became segregated because of non-attendance by the white students who had been assigned there were certainly no more segregated than the all-black Lincoln, Madison, Roosevelt, and South Oak Cliff High Schools, or the other one-race high schools in Dallas whose desegregation has been sacrificed by the District Court to the unsubstantiated fear of "white flight."

grams of interest to them, or to attend a school where their racial or ethnic proportion in the student body is less than in the school system as a whole. Compare *United States v. Jefferson County Board of Education*, 372 F.2d 836, 890-891 (5th Cir. 1966), adopted on rehearing *en banc*, 380 F.2d 385 (5th Cir. 1967), *cert. den.*, 389 U.S. 840.

Nor does the magnet school concept offer any realistic promise of ever effectively desegregating the high schools of Dallas, let alone do it now. The magnet schools involve only a small proportion of the high school population. They have no effect whatever on bringing integration into the regular attendance area high schools where the vast majority of the student population attends.⁹ The use of magnet schools can have excellent educational value. They can play a role in helping to create and maintain a system of integrated student enrollment. But magnet schools, as they exist in Dallas, cannot begin to do the whole job of desegregation all by themselves.

In summary, the high school aspect of the desegregation plan is essentially a lost opportunity to use methods that the defendants are using successfully to achieve desegregation in earlier grade levels. It is based apparently on the assumed reluctance of white students to go to desegregated

⁹ There may also be some question about the nature of the integration that occurs in a school with a magnet-type program. As pointed out in footnote 5, the April 1979 DISD Report to the District Court concerning enrollment in the Polk Intermediate Vanguard School (grades 4-6), shows that there are 152 regular program students and 119 Vanguard program students. The regular program students are all minority, while the Vanguard program is substantially integrated. While the exact nature of the operation of this program is not clear on the Record before this Court, it appears that the magnet-type programs may not actually integrate the school generally, but only the particular magnet program that exists within the school. To the extent that this is true in the magnet-type programs, the desegregating effectiveness of such programs is further reduced.

schools. It operates as an inadequate freedom of choice plan with no real prospect of significantly desegregating the high school student enrollment system generally. It is hard to see how the Court of Appeals could have done other than reject it in the absence of specific consideration and findings that the more effective desegregation devices that are apparently available are not feasible.

2. The Early Elementary Schools (K-3).

The major reasons given by the District Court for leaving the segregated enrollment untouched in the early elementary grades were the lesser ability of young children to deal with the problems of transportation, the special programs in the minority areas that were presumed to result in higher quality education for minority students there, and the opportunity to use the diagnostic-prescriptive concept in the early childhood learning centers with parental involvement. On this basis, the District Court provided for attendance in grades K-3 in the local area around each such elementary school, modified only by the opportunity for majority-to-minority transfers. *Estes Pet. for Cert.* 32a-33a, 51a-55a.

The result is a highly segregated pattern of early elementary school enrollments. As shown by the chart on page 9, *supra*, 36 of the 44 separate K-3 centers (82%) are one-race schools even when only the four "racially proportioned" sub-districts are considered—that is, not including the all-black East Oak Cliff sub-district, or the Seagoville sub-district in which no separate K-3 centers exist. Indeed, in three of the sub-districts¹⁰ almost all of the separate early elementary schools are of one race—16 out of 19 in

¹⁰ The figures for the Southwest sub-district are less conclusive because only two separate K-3 schools exist there. That sub-district is also one of the more integrated areas of Dallas.

the Northwest, 12 out of 13 in the Northeast, and at least 6 out of 10 in the Southeast.

While the age of students is one of the important factors in determining the feasible limits on the time and distance of travelling to school, *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 31 (1971), it was not intended to be a reason for precluding such transportation altogether when that is necessary to desegregate a school system. Surely, the value of an integrated education is a factor that also must weigh heavily in the balance of "legitimate local problems," *Monroe v. Board of Commissioners*, 391 U.S. 450, 459 (1968). Yet, the District Court merely cited the age of such students generally as an excuse for totally avoiding desegregation of these crucial grade levels.

The court made no findings of fact that would show the infeasibility of some meaningful degree of school pairing. Nor did it consider the possibility of transportation distances that might be well within the ability of younger children to deal with. Much more careful and individualized consideration of these factors should be required in light of the everyday busing of large numbers of such children throughout our country. It would no doubt come as a surprise to the millions of parents in both urban and rural areas to learn that their young children are being harmed by being transported to consolidated elementary schools or special schools miles from their homes for purposes unrelated to desegregation.¹¹ Indeed, the objection was not

¹¹ "Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the Nation's public school children, approximately 39%, were transported to their schools by bus in 1969-1970 in all parts of the country." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 29 (1971).

raised in earlier times when both white and black children of all ages were being bused for long times and great distances, often past schools of the opposite race, in order to keep them *apart*. Clearly, considerations of young age in determining how far a child should travel to school cannot legitimately be used to *preclude* all serious consideration of *any* desegregating school assignment at all.

Likewise there is no finding that the educational concepts and programs that are desired in these early years could not be carried out as well under a system of integration. As to the District Court's reliance on special programs for a higher quality of education, it should go without saying that such programs are not sufficient substitutes for eliminating dual systems of student enrollment. This has been true ever since *Brown v. Board of Education*, 347 U.S. 483 (1954), overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896).

The complete writing-off of desegregation in the early elementary schools is further illustrated by the fact that the magnet-type school concepts that are used in the Vanguard, Academy and magnet-schools in the other grade levels of Dallas apparently play no real part as a supplementary tool to desegregate grades K-3.

3. The East Oak Cliff Sub-District.

The District Court's treatment of the virtually all-black East Oak Cliff sub-district is similar to its treatment of the high school grade levels: it created an aspect of the system that remains initially highly segregated and then relied solely on a transfer system—to magnet schools or by majority-to-minority transfers—as the only means of achieving any desegregation. This approach is constitutionally inadequate in East Oak Cliff for the same reasons that it is inadequate in the high school levels generally.

Because of the heavy concentration of black population within East Oak Cliff, there may well be greater difficulties in substantially desegregating that area than exist in other geographical areas of the city. The fact does not, however, justify writing off the entire district without more strictly scrutinizing the possibilities for achieving desegregation through regular student assignments to integrated schools, complemented by the other appropriate special education programs and magnet schools contained in the plan.

What the District Court's plan essentially does is draw a line around an entire area and hold that no attempt will even be made to change the racial make-up of the enrollments there except through the voluntary transfer devices. As a result, no significant desegregation in any of the regular attendance area schools was projected at the time of the plan's adoption, or is likely to be achieved under a continuation of the present plan.

While there is nothing inherently improper about using the sub-district approach to an urban desegregation plan, that approach should not be allowed to create an all-black district in a way that prevents the use of all parts of the system in a plan of desegregating the whole district. See *United States v. Scotland Neck City Board of Education*, 407 U.S. 484 (1972). Plans were submitted to the District Court by the plaintiffs and the plaintiff-intervenors that would have brought significant desegregation to the schools within the East Oak Cliff area. Yet, the District Court seemed merely to draw a line around the problem and write it out of the system except for magnet schools, quality education programs, and transfers.

At the very least, the failure to do more to desegregate a major all-black section of Dallas requires a fuller explanation with findings of fact focussed on the particular problems that might be involved, rather than assuming too easily that nothing could be done. That is what the Court of Appeals would require.

C. *The Dallas Independent School District's Racially Dual System Was Created by State Law, Its Patterns of Racially Segregated Enrollment Have Never Yet Been Corrected, and a System-Wide Remedy Is Therefore Constitutionally Required.*

There is no doubt that the District Court in this case has found that the dual system of Dallas is uncorrected, and is system-wide. As the District Court stated when this case was originally brought:

When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

Tasby v. Estes, 342 F. Supp. 945, 947 (N.D. Tex. 1971), *revd. on other grounds*, 517 F.2d 92 (5th Cir. 1975), *cert. den.* 423 U.S. 939 (1975).

The District Court went on to refer to the required remedies for the various aspects of a dual system, such as faculty and staff desegregation, majority-to-minority transfer policies, the use of transportation, school construction and site selection, and noted:

The Dallas School Board has failed to implement any of these tools or to even suggest that it would consider such plans until long after the filing of this suit and in part after the commencement of this trial.

Tasby v. Estes, supra, 342 F. Supp. at 948.

Many of these desegregation tools have since been implemented in Dallas under the compulsion of court order. In the area of student enrollment, however, no adequate plan has ever yet been ultimately approved or held by the District Court or by the Court of Appeals to have successfully brought the school system into constitutional compliance in that aspect of its operation. The statistics of student enrollment revealed by this record and projected under the District Court's plan show how extensive and widespread the segregation continues to be.

This case involves a large, urban school system in the South—one in which segregation existed in every aspect of its system under the mandate of state statutes. *Bell v. Rippey*, 146 F. Supp. 485, 487 (N.D. Tex. 1956). As such, it is on all fours with the school district involved in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), where the Chief Justice, speaking for the Court, stated, "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation." *Id.* at 15.

While cautioning that the basis for any judicial remedy is the unconstitutional dual system itself, this Court in *Swann* made clear that the use of racial school enrollment statistics was relevant to determining whether a plan was effectively dismantling a dual attendance system in the context of geographical attendance zones. *Swann* made it clear that the use of pairing and transportation of students to schools outside their areas of residence was an appropriate and sometimes necessary tool for eliminating racial attendance patterns, even though, "more often than not, these zones are neither compact nor contiguous; indeed they may be on opposite ends of the city." *Id.* at 27. It is clear that this Court in *Swann* contemplated a complete wiping out, to the extent feasible, of the segregated attendance patterns

that accompanied a school system whose segregation had been state imposed.

All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

Id. at 28.

Swann did not impose a requirement for maintaining racial balance in the schools once their segregated attendance patterns have been fully corrected, but it does require their full correction. The full remedy clearly has never occurred in Dallas.

There is no inconsistency between the requirement of full elimination of segregated attendance in a system with state-imposed segregation, and the principle that the remedy must be directed to the constitutional wrong.¹² While the remedies of *Swann* may not be invoked to achieve objectives other than correcting the violation, the Court there recognized the problem of sorting out the entangled web of inter-related causes and effects of school and residential segregation. As the Court stated:

¹² Indeed, this Court has now made clear that the remedies of *Swann* apply as well to systems where the policy of segregation was not statutorily imposed and where the public school officials have not shown that the segregation was not caused by the unconstitutional policies and acts. *Columbus Board of Education v. Penick*, — U.S. —, 47 U.S.L.W. 4924 (1979); *Keyes v. School District No. 1*, 413 U.S. 189 (1973).

People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.

Id. at 20-21.

We do know, as the Court pointed out, that decades of existence under a system of state-mandated school segregation keeps all other things from being equal. The school segregation in Dallas today exists as an extension of a state-imposed discriminatory system that has never been fully remedied. It would not be logical or fair to deprive the plaintiffs of a full remedy in this case just because the school board's failure to more promptly begin to devise remedies to deal with segregation in all of the various aspects of the system now raises doubts about which kind of segregation caused the other. To the extent that we cannot know just what segregation would or would not exist today but for the decades of state-imposed school segregation, we must assure a full remedy for those who have been constitutionally deprived. *Swann* and the other decisions of this Court require no less.

II.

Proper Principles of Appellate Review Left the Court of Appeals No Responsible Alternative But to Remand the District Court's Plan in Light of the Large Number of One-Race Schools and the Failure to Explain Any Adequate Justification for Falling So Far Short of the Elimination of the Segregated Student Enrollment in Most of the Dallas School System.

The Court of Appeals was faced with the review of a desegregation plan whose goal *must* be "to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 437-438 (1968). Full compliance with this constitutional mandate, and thus the standards of any judicially ordered remedy, requires "a system without a 'white' school and a 'Negro' school, but just schools." *Green*, at 442.

In speaking to the requirements of a desegregation plan for a large, urban school system that had been segregated under state law, this Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, *reh. den.*, 403 U.S. 912 (1971), applied these one-race-school principles to systems such as Dallas. Recognizing that "the existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law," the Court explicitly placed on the school districts, and on the district courts reviewing the adequacy of remedial plans, the obligation to "make every effort to achieve the greatest possible degree of actual desegregation and . . . thus necessarily be concerned with the elimination of one-race schools." *Swann*, at 26.

For purposes of district court review of school board proposals, and thus necessarily for purposes of proper re-

view of district court orders by the courts of appeal, the burden of justification of remaining one-race schools was placed upon the school boards:

No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.

Id. All of these strictures concerning one-race schools were made specifically in the context of an urban school system, like Dallas, with significant concentrations of residential segregation.

In the light of this specific language, the Court of Appeals in this case was faced with a plan that left at least 70 one-race schools—not just “some” or “some small number” as referred to in *Swann*. The nature of the plan itself raises numerous questions as to why many of these schools could not be integrated as easily as some of the others that had been, as described in earlier parts of this brief. The Court of Appeals had three years earlier directed the District Court to “immediately take the necessary steps, using and

adapting the techniques discussed in *Swann*,” and stressed to that court that, “It is imperative that the dual school structure of the DISD be completely dismantled by the second semester of the 1975-76 academic year.” *Tasby v. Estes*, 517 F.2d 92, 110 (5th Cir. 1975), *cert. den.* 423 U.S. 939.

It is hard to see how the Court of Appeals could have come down with a more moderate decision given the contrast between this Court's mandates in *Green* and *Swann* and the projected operation of the District Court approved plan for Dallas. The Court of Appeals stated the dilemma of reviewing such a plan:

We cannot properly review any student assignment plan that leaves many schools in a system one race without specific findings by the district court as to the feasibility of these techniques. . . . There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing.

Estes Pet. for Cert. 137a.

The Court of Appeals did not preclude the eventual justification of one-race schools if the findings, supported by the record, would show the infeasibility of desegregating them:

The district court is again directed to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools and to reevaluate the effectiveness of the magnet school concept. If the district court determines that the utilization of pairing, clustering, or the other desegregation tools is not practicable in the

DISD, then the district court must make specific findings to that effect.

Estes Pet. for Cert. 138a. Nor was the Court of Appeals unduly interfering with the District Court's discretion, or substituting its own findings of fact for those of the District Court. In the same decision, the Court of Appeals deferred to that discretion and upheld the District Court's dismissal of the separate Highland Park Independent School District as a defendant (Estes Pet. for Cert. 139a-141a) and its approval of the school board's selection of a challenged school site (Estes Pet. for Cert. 141a-145). The Court of Appeals further recognized that special considerations as to feasibility may apply to school districts made up predominantly of racial or ethnic minorities. Estes Pet. for Cert. 134a.

But when it came to the student assignment portion of the Dallas plan, the only alternative to the Court of Appeals' remand would have been the approval of a plan that left at least 70 one-race schools and, without adequate explanation, neglected to use apparently available desegregation techniques in several significant levels and areas of the Dallas school system.

Where school boards are under an obligation to come up with effective plans, and district courts are under an obligation to review those plans with an eye to effective enforcement of constitutional rights, courts of appeals necessarily have an obligation to review the district court decisions in a meaningful way. Without more information in the form of factual findings, there was no responsible way for the Court of Appeals in this case to approve a plan that is so woefully inadequate on its face "to achieve the greatest possible degree of actual desegregation" and be "concerned with the elimination of one-race schools." *Swann, supra*, 402 U.S. at 26.

The importance of the "proper allocation of functions between the district courts and the courts of appeals" in school desegregation cases has been noted by this Court. *Dayton Board of Education v. Brinkman I*, 433 U.S. 406, 409 (1977). Just as important as the deference due the district courts as triers of fact is the recognition of the function of the courts of appeals in these matters. The entire history of the Fifth Circuit's school desegregation litigation is itself a dramatic illustration of that importance. Time after time, reluctant district court judges have been held to the standards enunciated by this court only because of the dogged insistence of the Court of Appeals. The chain of cases developing the standards for school desegregation plans ultimately led to the Fifth Circuit's formulation of its model freedom of choice decree in *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *adopted on reh. en banc*, 380 F.2d 385 (5th Cir. 1967), *cert. den.* 389 U.S. 840—a model decree born of its painful and frustrating experience in reviewing district court desegregation orders.

This case itself furnishes an illustration of the role of the court of appeals in requiring district court enforcement of desegregation. In the original case involving the desegregation of the Dallas schools, the court of appeals reversed a district court order dismissing the suit as premature. *Brown v. Rippy*, 233 F.2d 796 (5th Cir. 1956). The next year the court of appeals had to reverse the district court's second dismissal of the case, this time for failure to exhaust administrative remedies. *Borders v. Rippy*, 247 F.2d 268 (5th Cir. 1957). The district court was subsequently reversed again for approving a plan that would have allowed parents to choose whether to enroll their children in a segregated or an integrated school. *Boson v. Rippy*, 285 F.2d 43 (5th Cir. 1960). All of these cases, and others, involved district court orders by a judge who preceded

the district court judge who is currently handling the Dallas school case.

The present district court judge, however, has also demonstrated a reluctance to take this Court's admonitions in *Swann* seriously. The first plan entered in the present case was largely based upon the district court's reluctance to require the transportation of students. It sought to achieve desegregation through television—a cable television arrangement whereby white and black classrooms would be able to communicate with each other on a two-way audio-visual hook-up. In directing the Dallas school officials in 1971 to formulate a plan for achieving a unitary school system, the judge who is presently handling this case explained:

Now all of this is not as grim as it sounds. I am opposed to and do not believe in massive cross-town bussing of students for the sole purpose of mixing bodies. I doubt that there is a Federal Judge anywhere that would advocate that type of integration as distinguished from desegregation. There are many many other tools at the command of the School Board and I would direct their attention to part of one of the plans suggested by TEDTAC which proposed the use of television in the elementary grades and the transfer of classes on occasion by bus during school hours in order to enable the different ethnic groups to communicate. How better could lines of communication be established than by saying, "I saw you on TV yesterday," and, besides that, television is much cheaper than bussing and a lot faster and safer. This is in no sense a Court order but is merely something that the Board might consider.

Tasby v. Estes, 342 F. Supp. 945 (N.D. Tex. 1971). The school board based much of their plan at that time on the

district court's suggestion, and thus occasioned the first reversal of a plan in the present litigation. *Tasby v. Estes*, 517 F.2d 92 (5th Cir. 1975). It is this same reluctance to take *Swann* seriously that the Court of Appeals is dealing with in its present remand.

The essential effect of the Court of Appeals decision in this case is to require district courts to give serious and specifically-focussed consideration to the feasibility of eliminating one-race schools and achieving the greatest possible degree of actual desegregation necessary to dismantle racially created enrollment patterns as required by *Swann* and by use of the devices that *Swann* deals with. In one sense it is an exercise of the appellate role that complements the role of the trial court by calling upon it to meet its function as trier of fact in a responsible manner.

This is the kind of guidance and insistence on effective enforcement of constitutional rights and obligations, as set forth by this Court, that characterizes the tradition of the Court of Appeals for the Fifth Circuit in this long and painful line of cases. At the very least, this moderate order of the Court of Appeals should be affirmed to allow reconsideration of the Dallas plan in this context. To do otherwise would be to undermine important principles of responsible appellate review and harm the ability of the courts of appeal to carry out their important function in our federal judicial system.

CONCLUSION

The decision of the Court of Appeals should be affirmed. It is particularly important to indicate once again this Court's adherence to the principles of *Brown I and II*, *Green* and *Swann* upon which the Court of Appeals is here insisting.

Beyond the affirmance of that decision, this Court should make clear that those principles, as applied to the Dallas Independent School District, require greater efforts and results in eliminating segregated school attendance patterns, and use of the *Swann* techniques in the absence of "legitimate local problems" that in fact make those techniques infeasible or inapplicable in particular instances in the Dallas school desegregation process.

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Nos. 78-253, 78-282 and 78-283

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In the Supreme Court of the United States
OCTOBER TERM, 1978

NOLAN ESTES, ET AL., PETITIONERS

v.

METROPOLITAN BRANCHES OF THE DALLAS
N.A.A.C.P., ET AL.

DONALD E. CURRY, ET AL., PETITIONERS

v.

METROPOLITAN BRANCHES OF THE DALLAS
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RALPH F. BRINEGAR, ET AL., PETITIONERS

v.

METROPOLITAN BRANCHES OF THE DALLAS
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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

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BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

QUESTIONS PRESENTED

1. Whether systemwide relief was warranted to eliminate the vestiges of Dallas' dual school system.

2. Whether the court of appeals erred in remanding the case for additional findings regarding the feasibility of reducing or eliminating the one-race schools not affected by the district court's remedial order.

INTEREST OF THE UNITED STATES

The United States has substantial enforcement responsibility with respect to school desegregation under Titles IV, VI, and IX of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, 2000d and 2000b-2, and under the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701 *et seq.* The Court's resolution of the issues presented in this case will affect that enforcement responsibility. The United States has participated either as a party or as amicus curiae in this Court's previous school desegregation cases, including *Brown v. Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Green v. County School Board*, 391 U.S. 430 (1968); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972); *School Board of City of Richmond v. State Board of Education*, 412 U.S. 92 (1973); *Keyes v. School District No. 1*, 413 U.S. 189 (1973);

Milliken v. Bradley, 418 U.S. 717 (1974); *Runyon v. McCrary*, 427 U.S. 160 (1976); *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976); *Milliken v. Bradley*, 433 U.S. 267 (1977); *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977); *Columbus Board of Education v. Penick*, No. 78-610 (July 2, 1979); and *Dayton Board of Education v. Brinkman*, No. 78-627 (July 2, 1979).

STATEMENT

The Dallas Independent School District ("the DISD" or "the Board") is the eighth largest urban school district in the United States (Pet. App. 14a).¹ Its boundaries (which are not coterminous with the City of Dallas) embrace an area of about 351 square miles, and it has an enrollment of more than 130,000 students (Pet. App. 14a; *Estes Br.* 7).² Although a majority of the students in the DISD were Anglos when this suit was commenced in 1970, by the 1975-1976 school year, when the district court conducted hearings on relief, the student population was 41.1%

¹ "Pet. App." refers to the petition filed in No. 78-253.

² "Estes Br." refers to the brief filed by the petitioners in No. 78-253, *Nolan Estes, et al. v. Metropolitan Branches of the N.A.A.C.P., et al.* We will refer to petitioners' brief in No. 78-282, *Donald E. Curry, et al. v. Metropolitan Branches of the Dallas N.A.A.C.P.*, as the "Curry Br.," and to petitioners' brief in No. 78-283, *Ralph F. Brinegar, et al. v. Metropolitan Branches of the Dallas N.A.A.C.P.*, as the "Brinegar Br."

Anglo, 44.5% black, 13.4% Mexican-American, and 1% other races (Pet. App. 13a-14a).³

A. The previous desegregation suits against the DISD

At the time of this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), Dallas maintained a racially segregated school system required by state law.

In 1955 a group of black school children and their parents instituted litigation to desegregate the Dallas schools, and in 1960 the Fifth Circuit ordered the district court to require the Board to implement a stair-step plan, under which one grade per year would be removed from the dual educational structure and administered in a unitary fashion.⁴ *Boson v. Rippy*,

³ The earliest enrollment figures by race that the DISD has supplied are for the 1966-1967 school year.

In its earliest opinion, the court of appeals used the terms "white," "Mexican-American," and "black," defining a Mexican-American as a person with a Spanish surname (see 517 F.2d at 96 n.1). Since then, the parties and the courts below have generally used the terms "Anglo," "Mexican-American," and "black;" and we do the same. The DISD initially included Mexican-American students in the same ethnic category as Anglo students. The DISD first established a separate category for Mexican-American students in the 1968-1969 school year, at which time Mexican-Americans made up 7.7% of the total DISD student body (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 3, filed Nov. 18, 1970).

⁴ The original desegregation suit went through numerous appeals before the stair-step plan was finally adopted. See *Brown v. Rippy*, 233 F.2d 796 (5th Cir.), cert. denied, 352 U.S. 878 (1956) (reversing the district court's order dismissing the suit as premature); *Borders v. Rippy*, 247 F.2d 268 (5th Cir. 1957); *Rippy v. Borders*, 250 F.2d 690 (5th Cir. 1957); *Boson v. Rippy*, 275 F.2d 850 (5th Cir. 1960)

285 F.2d 43. The stair-step plan obligated the DISD to eliminate the use of racial criteria in assigning students to its schools. The DISD was not required to implement any other measure to remove the vestiges of its prior dual system by techniques such as "pairing" or "majority-to-minority" transfers.

On June 23, 1965, the DISD board adopted a resolution providing for the phased desegregation of elementary, junior high, and high schools, and for the establishment of single attendance districts for each school (Deft. Ex. 1 (1971)). The superintendent was vested with discretion to carry out the resolution by establishing the boundaries of the attendance districts (*ibid.*). The result was the institution of a "neighborhood school" assignment policy in the DISD. On September 7, 1965, the DISD adopted a resolution to expedite implementation of the stair-step plan to include all twelve grades as of September 1, 1967 (Deft. Ex. 4 (1971)). The district court conducted no subsequent monitoring of the stair-step plan, nor did it ever declare the DISD to have achieved unitary status.

B. The institution of the present suit and the district court's first order

In 1970 a group of black and Mexican-American students and their parents instituted the present class

(holding that the district court had erred in failing to require the DISD to submit a desegregation plan). Even after the stair-step plan had been ordered, the court of appeals found it necessary to issue two additional orders requiring the district court to include the twelfth grade in the plan. *Britton v. Folsom*, 348 F.2d 158 (5th Cir. 1965), and *Britton v. Folsom*, 350 F.2d 1022 (5th Cir. 1965).

action in the United States District Court for the Northern District of Texas seeking to eliminate the remaining segregative effects of the prior dual system. Although the racial composition of the DISD's student body was approximately 59% Anglo, 33% black, and 8% Mexican-American when the complaint was filed, 67 of the 187 schools in the system had a student enrollment that was at least 90% Anglo; 40 of the schools had an enrollment that was 90% or more black; and in 9 additional schools the combined enrollment of black and Mexican-American students was more than 90% (Pltf. Ex. 5 (1971)). In 1970, 91.4% of all black students in the DISD attended schools where blacks or black and Mexican-Americans made up at least 90% of the student body, and only 2.72% of the black students attended schools where the student body was 57% or more Anglo (Pltf. Ex. 2 (1971)). Plaintiffs sought an injunction to desegregate the DISD meaningfully, assignment of faculty to reflect the overall racial composition of the district, termination of site acquisition and school construction that would increase or continue racial segregation in the district, and adoption of policies to lower the dropout rate among Mexican-American students.

The Board contended that no further court-ordered desegregation was warranted, since the Dallas schools were in compliance with the stair-step desegregation plan that the court of appeals had approved in 1960. The DISD claimed that the large number of one-race schools remaining in the district was the result of

changes in residential patterns since the institution of the stair-step plan.

On July 12, 1971, trial on the issue of liability began. Several parents testified that their children did not attend integrated schools, and that their children had not been assigned to the schools nearest their homes (I Tr. 19-20, 32 (1971); II Tr. 384 (1971)).⁵ An employee who had drawn school attendance zone maps for the DISD testified that there were indeed a number of areas in the school district where students were not assigned to elementary, junior high, or high schools nearest their homes (I Tr. 64-70 (1971); Pltf. Exs. 7, 8, 11, 13, 15 and 16 (1971)). He used maps prepared from 1970 census data to illustrate the close correlation between zone lines for the DISD schools and racial population patterns (I Tr. 47-50, 59-60, 62-63 (1971)).

At the conclusion of the plaintiffs' case the DISD moved for summary judgment on the ground that "housing patterns * * * are the only things which resulted in any alleged all black school or all white school" (II Tr. 401 (1971)). The district court denied the motion, finding that the plaintiffs had made out a *prima facie* case (*ibid.*).

The DISD called two witnesses, School Superintendent Nolan Estes and William H. Fuller, Director of Pupil Accounting. On direct examination, Dr.

⁵ The record includes five volumes of testimony from the 1971 proceedings, numbered I-V, and ten volumes of testimony from the 1976 proceedings, numbered I-X. We will refer to the year as well as the volume number in citing these transcripts.

Estes listed 19 schools that he believed had shifted from a predominantly Anglo student enrollment to a predominantly black student enrollment because of changes in residential patterns occurring after 1965 (II Tr. 514-520 (1971)). The DISD introduced no evidence on the reason for the racial imbalance in the 97 other schools in the DISD that had student enrollments either 90% or more Anglo, or 90% or more black and Mexican-American.

On cross-examination, Dr. Estes stated that there were sixteen schools built since 1965 in which Anglos made up more than 90% of the student body, or in which blacks or blacks and Mexican-Americans made up more than 90% of the student body (II Tr. 566-578 (1971)). Dr. Estes confirmed the fact that students in the DISD did not always attend schools nearest their homes, even where that would have promoted integration. He acknowledged that in 1970, Julia Frazier Elementary School, which had a 100% black enrollment, was so overcrowded that the use of ten portable classrooms was necessitated, while Ascher Silberstein Elementary School, which had a 97.8% Anglo enrollment, was only half-filled—even though Silberstein was actually closer than Frazier to some of the families in the Frazier zone (II Tr. 618-619 (1971)). Nonetheless, the DISD had not altered the attendance boundaries between Frazier and Silberstein (II Tr. 619-621 (1971)). He testified that capacity, distance, geographic barriers, traffic arteries, curriculum and projected enrollment had played a part in the DISD's drawing of attend-

ance zones, but that the racial composition of the student body was not considered (II Tr. 527, 590-591 (1971)).

On July 16, 1971, the district court issued an opinion⁶ finding that "elements of a dual system still remain" in the DISD (342 F. Supp. at 947):

When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

The court rejected the Board's contention that the continued existence of one-race schools was the result of changes in residential patterns, reasoning that (*ibid.*):

The School Board has asserted that some of the all black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools.

Finally the district court rejected the Board's claim that it had completely fulfilled its constitutional obli-

⁶ The opinion, which is not reprinted in the appendices, is reported at 342 F. Supp. 945.

gations once it implemented the 1965 court-ordered stair-step plan. The district court pointed out (*id.* at 947-948) that the Board's arguments ignored this Court's ruling in *Green v. County School Board*, 391 U.S. 430, 439 (1968), that a segregated school system must "come forward with a plan that promises realistically to work * * * now * * * until it is clear that state-imposed segregation has been completely removed" (emphasis the Court's). Nor had the Board made any attempt to comply with the court of appeals' ruling in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), that faculty and staff must be desegregated.⁷

⁷ The DISD's policy of assigning faculty on a racial basis persisted throughout implementation of the stair-step plan, so that in 1971 black teachers were still assigned almost exclusively to black schools, and white teachers to white schools (Answer to Interrogatory 1(d), Answers to Plaintiffs' Interrogatories (First Set), filed Nov. 18, 1970). When the racial composition of the student body in a school changed, the faculty changed as well. For example, Holmes and Zumwalt Junior High Schools, and Pease and Stone Elementary Schools, which had all-white faculties in 1963-1964, opened with all-black faculties the very next year (*ibid.*). Although the record includes no statistics on the racial makeup of the schools in question during the 1963-1964 school year, by the 1966-1967 school year each of these schools had an all-black student body (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 4, filed Nov. 18, 1970).

The first indication that the DISD planned to abandon its segregated teacher assignment practices was Dr. Estes' testimony in 1971 that beginning in the 1971-1972 school year the *Singleton* guidelines would be implemented (II Tr. 414 (1971)).

The district court ordered the DISD to submit a desegregation plan, and after conducting further hearings on relief, it approved a plan with the following terms:⁸ (1) elementary students would remain in their neighborhood schools but predominantly black and Mexican-American classrooms would be grouped with predominantly Anglo classrooms for closed circuit television classes and weekly visits; (2) secondary students would be assigned on a "satellite" zone basis and some secondary schools would be paired; (3) faculty desegregation would be carried out in accordance with the *Singleton* guidelines; (4) a majority-to-minority transfer program would be implemented for secondary students; (5) a tri-ethnic advisory committee would be established;⁹ and (6) site selection and school construction would be carried out in a way calculated to "prevent the recurrence of a dual school structure." The district court subsequently stayed the student assignment provisions for secondary students on the grounds that the satelliting and pairing would be disruptive and would impose undue burdens on black students (342 F. Supp. at 953, 955-957).

⁸ The remedial order, which is not reprinted in the appendices, is reported at 342 F. Supp. at 949-954.

⁹ The district court also found that the plaintiffs had not proved *de jure* discrimination by the DISD against Mexican-Americans, but it concluded that Mexican-Americans are a sufficiently separate and identifiable ethnic group in the DISD to warrant their being taken into consideration in any desegregation plan. Accordingly, the court appointed a tri-ethnic advisory committee that included representatives of the Mexican-American community (*ibid.*).

C. The first appeal

The Board did not appeal the district court's finding that elements of its former dual school system remained, but the plaintiffs appealed from the district court's remedial order.¹⁰ The court of appeals affirmed portions of the district court's order, but held that neither the "television plan" for elementary students nor the assignment plan for secondary students was adequate to eliminate the lingering vestiges of segregation in the Dallas schools.¹¹ Because the "television plan" would not have altered the racial characteristics of the DISD's elementary schools, the court of appeals concluded it could not be accepted as "a legitimate technique for the conversion of the DISD from a dual to a unitary educational system * * * without a "white" school and a "Negro" school, but just schools'" (517 F.2d at 103, quoting *Green v. County School Board, supra*, 391 U.S. at 442). With

¹⁰ In two consolidated appeals the plaintiffs also sought reversal of the district court's refusal to enjoin various school construction and renovation projects.

¹¹ The court of appeals' opinion, which is not included in the appendices, is reported at 517 F.2d 92. The court of appeals affirmed the district court's decision to treat Mexican-Americans as a separate ethnic minority for purposes of developing a desegregation plan, and that portion of the lower court's rulings is not challenged here. The court of appeals also approved the district court's creation of a tri-ethnic advisory committee, and it declined, at that time, to disturb the district court plan for the desegregation of the faculty and staff of the DISD. Finally, the court of appeals affirmed the district court's refusal to order interdistrict busing, as well as its refusal to exclude from its remedial order recently developed areas of the DISD.

respect to secondary schools, the court of appeals found that the plan's "extremely limited objective" of reducing the proportionate share of a single racial group's enrollment at a particular school to just below the 90% mark "is short of the Supreme Court's standard of conversion from a dual to a unitary system" (517 F.2d at 104). Finally, the court of appeals concluded that the Board had erred in planning its site selection and construction on the basis of the attendance zones established by the district court's remedial orders, which it found (*id.* at 106)—

* * * were, for the most part, the same zones which had been employed by the DISD over previous academic years to implement its "neighborhood school concept." As the district court found in this case, the "neighborhood school concept" has resulted in the perpetuation of the vestiges of the dual school system in the DISD.

The court of appeals remanded the case to the district court for the formulation of a new plan, directing the district court to use and adapt "the techniques discussed in *Swann [v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971)]*" (517 F.2d at 110) to dismantle the dual structure of the Dallas school system by the middle of the 1975-1976 school year.

This Court denied the Board's petition for a writ of certiorari. *Estes v. Tasby*, 423 U.S. 939 (1975).

D. The proceedings on remand in the district court

1. The plans submitted to the district court

On remand the district court conducted hearings in late 1975 and early 1976. The participants in these hearings were the parties and several groups of intervenors, including local branches of the N.A.A.C.P. The Curry intervenors, petitioners in No. 78-282, represented a group of residents in the northern section of the DISD, and the Brinegar intervenors, petitioners in No. 78-283, represented a group of parents and students from the residentially integrated East Dallas section of the DISD.

Six plans were considered by the district court and described in some detail in its opinion (Pet. App. 18a-29a). The DISD and N.A.A.C.P. plaintiff-intervenors each filed desegregation plans, and the district court appointed its own expert, Dr. Josiah C. Hall, to prepare an additional student assignment plan. Plaintiffs filed alternative plans A and B, and the sixth plan was submitted by the Educational Task Force of the Dallas Alliance, a community service organization that was granted *amicus curiae* status for the purpose of submitting its proposal (Pet. App. 6a).¹² The student assignment provisions of each plan were as follows.

The DISD's proposal used pairing and clustering to desegregate grades 4 through 12 in 72 schools in

¹² The court also received plans and suggestions from various other groups, including a proposal from a group of students at Skyline High School (Pet. App. 7a n.4).

predominantly Anglo parts of the district; it left undisturbed 48 one-race schools serving predominantly minority areas and 55 schools serving naturally integrated areas (Pet. App. 18a-19a & n.17). Under the DISD's proposal about 67% of the DISD's black students would have attended schools where the minority enrollment exceeded 90% (Deft. Ex. 11 (1976)).¹³

The plaintiffs' Plan A divided the DISD into seven elementary subdistricts, with each school reflecting the racial composition of its subdistrict (Pet. App. 21a). Naturally integrated subdistricts retained their prior assignment patterns and all other schools were paired or clustered (*ibid.*). This plan left fewer than 1% of the black students in schools where minority enrollment exceeded 90% (Pltf. Ex. 16 (1976)). Plaintiffs' alternative Plan B divided the DISD into eight subdistricts, one of which—South Oak Cliff—remained predominantly minority, continuing its existing student assignment patterns but with enhanced facilities and programs aimed at attracting students from the other seven subdistricts (Pet. App. 22a & n.32). In the other seven subdistricts, pairing and clustering were used to achieve desegregation, except where residential integration made such tools unnecessary (*ibid.*). Plan B left about 23% of the DISD's black students in schools

¹³ All of the proposed plans also advocated the use of "magnet" schools, which are schools with special curriculums or programs designed to attract students from throughout the school district.

where minority enrollment exceeded 90% (Pltf. Ex. 16 (1976)).

The plan proposed by the N.A.A.C.P. plaintiff-intervenors sought to achieve racial balance in every school to reflect the proportions in the DISD student population as a whole using pairing and clustering, except in naturally integrated areas, and eliminating one-race schools entirely (Pet. App. 23a).

Dr. Josiah Hall, the court's expert, presented a plan continuing existing attendance zones in naturally integrated areas, and pairing and clustering schools in predominantly Anglo areas with schools in predominantly black and Mexican-American areas (Pet. App. 24a). Students in kindergarten and first grade were to attend schools nearest their homes, and existing attendance zones were retained for other grades if transportation time to another school exceeded thirty minutes each way (Pet. App. 24a-25a & n.40). Under the Hall plan, 44% of the black students would have attended schools in which the black enrollment exceeded 90% (Hall Ex. 5 (1976)).

The plan submitted by the Educational Task Force of the Dallas Alliance divided the DISD into five subdistricts (Pet. App. 26a). All the subdistricts but one—South Oak Cliff—reflected the racial proportions of the DISD as a whole (*ibid.*). Students in grades K through 3 were to attend the nearest school that would promote integration, with the distance not to exceed four miles from their homes (*ibid.*). In grades 4 through 8, students living in naturally integrated areas remained in their existing attendance zones and students in other areas were assigned to schools in

the subdistrict that would reflect the racial proportions of the subdistrict (Pet. App. 27a). The attendance zones for students in grades 9 through 12 were not altered, but students were to be given the option of attending magnet schools or participating in a majority-to-minority transfer program (Pet. App. 27a-28a).

2. The district court's desegregation order

After conducting hearings on the various desegregation proposals, the district court filed an opinion and order requiring implementation of a revised version of the Dallas Alliance Task Force plan (Pet. App. 4a-41a, 46a-120a).¹⁴ The district court's plan divided the DISD into six subdistricts (Pet. App. 53a). Four of these subdistricts had approximately the same racial make-up as the system as a whole; the remaining two subdistricts—Seagoville and East Oak Cliff—had an 82% Anglo student population and 98% black student population respectively (Pet. App. 53a, 135a). Within the subdistricts elementary stu-

¹⁴ On March 10, 1976, the district court entered an opinion and order generally approving the concepts of the plan submitted by the Dallas Alliance Task Force (Pet. App. 29a-41a). The court subsequently entered a supplemental opinion and final order (Pet. App. 46a-120a) setting forth the details of the Task Force plan as modified. The actual plan submitted by the Dallas Alliance contained no projected enrollment figures by which the district court could compare its desegregative impact with those of the other proposed plans. Projected enrollments were only supplied later when the DISD submitted its proposal for implementing the Dallas Alliance plan.

dents in grades K through 3 were to remain in their neighborhood schools (Pet. App. 57a). In areas that were not naturally integrated, students in grades 4 through 8 were assigned to centrally located intermediate and middle schools in the subdistrict (*ibid.*). In naturally integrated areas, prior attendance patterns were continued for grades 4 through 8 (Pet. App. 57a, 136a). High school students were to remain in their neighborhood schools unless they chose to attend magnet schools or to participate in a transfer program (Pet. App. 58a). Majority-to-minority transfers were permitted at all grade levels (Pet. App. 68a-71a), and the magnet school concept was expanded at the high school level and extended to create "academies" and "vanguard schools" with special programs at the middle and intermediate school level (Pet. App. 61a-63a).¹⁵

The student assignment provisions approved by the district court maintained approximately 66 schools in the DISD in which either the Anglo, the black, or the combined black and Mexican-American enrollments exceeded 90% (Pet. App. 132a-133a & n.3). The plan provided that all the schools serving the East Oak Cliff subdistrict—which enrolled 27,500 students, including 41% of the black students in the DISD—would have student bodies more than 90%

¹⁵ The plan approved by the district court also includes a number of provisions regarding accountability, personnel, and other matters that are not at issue here (Pet. App. 67a-68a, 73a-83a).

black, or more than 90% black and Mexican-American (Pet. App. 113a-118a, 132a-133a n.3).¹⁶

Approximately 50 one-race schools¹⁷ remained in subdistricts other than East Oak Cliff, including high schools in three of the five other subdistricts (Pet. App. 133a). In the Southeast subdistrict, Lincoln High School had a 100% black enrollment, while the enrollment at Samuell High School was 89% Anglo (Pet. App. 104a). In the Northeast subdistrict, Bryan Adams High School was 95.2% Anglo, while James Madison High School had 98.1% black students and 1.7% Mexican-Americans (Pet. App. 97a). In the Northwest subdistrict, both Hillcrest High School and White High School were 96% Anglo, whereas Pinkston High School had a combined black

¹⁶ Appendix A to the district court's opinion erroneously listed James Bowie elementary school, which had 29.7% Anglo students, in the East Oak Cliff subdistrict (Pet. App. 114a), but that error was corrected in the district court's supplemental opinion, which indicated that Bowie was in the Southwest district (Pet. App. 125a).

The earliest enrollment statistics by race in the record, those for the 1966-1967 school year (before full implementation of the stair-step plan), reveal that eight of the schools serving East Oak Cliff were already more than 90% black in enrollment that year (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 4, filed Nov. 18, 1970).

¹⁷ The court of appeals used the term "one race" to describe a school where either the Anglo enrollment or the combined black and Mexican-American enrollment exceeded 90% (Pet. App. 132a n.3), and we do the same.

and Mexican-American enrollment of 95.1% (Pet. App. 90a).¹⁸

The remaining one-race schools are found primarily among the elementary schools serving grades K through 3. This group includes 21 schools outside East Oak Cliff which had either Anglo, black, or combined black and Mexican-American enrollments of more than 90% in 1966-1967, the first year for

¹⁸ In 1966-1967 Hillcrest, Adams and Samuell were 100% white schools, and White had only one black student (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 4, filed Nov. 18, 1970). That same year Lincoln and Madison had 100% black enrollments (*ibid.*). Thus, of the seven one-race high schools remaining outside East Oak Cliff under the district court's order, six were one-race schools the year before full implementation of the stair-step plan in 1968.

The racial separation in these schools has decreased slightly as a consequence of the voluntary integration accomplished by students exercising majority to-minority transfer options. The April 15, 1979 report of the DISD to the district court contains the following figures:

Lincoln	Samuell	Bryan Adams
.18% Anglo	74.53% Anglo	86.26% Anglo
99.82% Black	18.19% Black	4.86% Black
	6.79% Mexican-American	6.82% Mexican-American
James Madison	Hillcrest	
.30% Anglo	78.14% Anglo	
98.81% Black	18.15% Black	
.75% Mexican-American	1.81% Mexican-American	
W. T. White	Pinkston	
90.38% Anglo	1.06% Anglo	
4.39% Black	82.08% Black	
3.61% Mexican-American	16.45% Mexican-American	

which the DISD has provided racial statistics.¹⁹ Although the district court's assignment plan employs grade configurations of K-3, 4-6, and 7-8, most of the DISD elementary schools include grades K through 6 (Pet. App. 136a n.9), so that in a single elementary school children in grades K-3 would be in one-race classes, but those in grades 4-6 would be in integrated classes. Looking only at grades K-3, there are 53 schools in the DISD in which the Anglo or combined black and Mexican-American enrollments for those grades exceed 90%.²⁰

Although the district court's plan did have some integrative effect on students in grades 4 through 8, it did not result in any overall desegregation of black students. Prior to implementation of the plan, approximately 59.19% of the black students and 16.41% of the Anglo students in the DISD attended one-race schools.²¹ As of the 1978-1979 school year, the third year under the district court's plan, the percentage of Anglo students enrolled in one-race schools had

¹⁹ The schools are Arlington Park, Brown, Cabell, Carr, Carver, Colonial, Darrell, Dunbar, Frazier, Gooch, Harris, Hassell, Hexter, Kramer, Lagow, Moseley, Ray, Rice, Thompson, Tyler, and Wheatley (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 4, filed Nov. 18, 1970).

²⁰ These figures are derived from the April 15, 1979 report of the DISD to the district court.

²¹ This figure is derived from the DISD's report to the district court on December 1, 1975. Data from that report are contained in the DISD's Answers to Interrogatories of Strom Intervenors, filed with the district court on December 5, 1975.

declined to 8%, but 59% of the black students in the district were still enrolled in one-race schools.²²

E. The second appeal

Both the plaintiffs and the N.A.A.C.P. plaintiff-intervenors appealed from the district court's remedial order, contending that the student assignment provisions were inadequate to eliminate the continuing effects of the DISD's past segregation. On April 21, 1978, the court of appeals, in the order challenged here, remanded the case for formulation of a new student assignment plan including findings that would "justify the maintenance of any one-race schools that may be a part of that plan" (Pet. App. 145a).

The court of appeals did not hold that a remedial plan for Dallas must eliminate all one-race schools; it held only that the district court must make findings regarding the reasons, if any, why one-race schools could not be eliminated by application of the various techniques previously approved by this Court (Pet. App. 137a-138a):

The district court was instructed in the opinion of the prior panel to consider the techniques for desegregation approved by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267 (1971). We cannot properly review any student assignment plan that leaves many schools in a system one race without specific findings by the district

²² These figures are derived from the April 15, 1979 report of the DISD to the district court.

court as to the feasibility of these techniques. *Davis v. East Baton Rouge Parish School Board*, No. 75-3610 (5th Cir. April 7, 1978). There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing. See *Mims v. Duval County School Board*, 329 F. Supp. 123, 133-134 (M.D. Fla. 1971).

Focusing on the problem presented by the continued existence of one-race high schools, the court of appeals stated (Pet. App. 138a; footnotes omitted):

Although students in the 4-8 grade configurations are transported within each subdistrict to centrally located schools to effect desegregation, the district court's order leaves high school students in the neighborhood schools. Within three of the four integrated subdistricts, this results in high schools that are still one-race schools. The district court is again directed to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools and to reevaluate the effectiveness of the magnet school concept. If the district court determines that the utilization of pairing, clustering or the other desegregation tools is not practicable in the DISD, then the district court must make specific findings to that effect.

The court of appeals also considered several other aspects of the district court's remedial order that are

not at issue here. It held the district court had erred in not requiring the Board to provide transportation for students who choose to participate in the majority-to-minority transfer plan (Pet. App. 138a-139a). The appellate court affirmed the district court's refusal to include the separate Highland Park school system in the student assignment plan (Pet. App. 141a).²³ And, in a related appeal, the court rejected the claims of a group of citizens who opposed a DISD plan to convert a shopping center in East Oak Cliff into a school complex (Pet. App. 141a-145a).

On May 22, 1978, the court of appeals denied the DISD's petition for rehearing (Pet. App. 146a-147a).

SUMMARY OF ARGUMENT

I

As required by the Texas Constitution, the DISD operated separate schools for black students and white students both before and after *Brown v. Board of Education*, 347 U.S. 483 (1954). In 1965-1967 the DISD, for the first time, implemented a federal

²³ The plaintiffs had sought unsuccessfully in the district court to include various independent school districts in the desegregation plan. All of these except the Highland Park Independent School District were dismissed on the plaintiffs' motion. Highland Park serves two virtually all-white communities surrounded by the DISD. The district court had concluded that for the past twenty years the Highland Park school district had not engaged in segregation and that its prior policy of discrimination had but a negligible effect on the DISD, and on this basis the court refused to include Highland Park in the student assignment plan for the DISD. The court of appeals affirmed (Pet. App. 141a).

court order requiring the elimination of segregatory assignments by race, but it took no other steps to dismantle its dual system, and the enrollment figures at the time of trial in 1971 revealed the continuation of the racial separation so long mandated by law. Almost all of the schools that were all-black at the time of the first court-ordered desegregation remained virtually all-black. More than 90% of the black students in the DISD continued to attend schools where more than 90% of the students were black. Moreover, by the time of trial the DISD had not desegregated its faculty.

The district court correctly recognized that the high degree of racial separation still found throughout the system was a vestige of the dual system that had not been dismantled.

The DISD had an affirmative duty to dismantle the dual system and eliminate its vestiges. Its obligation was to remedy the continuing effects of its longstanding segregation. This duty was not satisfied when the DISD—under court order—eliminated racial criteria for admission in 1965, which was only the first step in dismantling the dual system. The DISD had a duty to adopt a plan that would be effective to desegregate its school system. It had not done so at the time of trial.

II

Since the DISD had not dismantled its dual system, the district court's responsibility was to fashion a remedy to convert to a unitary system and eliminate the vestiges of the prior dual system root and

branch. The task of its remedial decree was to achieve "the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis v. Board of School Commissioners*, 402 U.S. 33, 37 (1972).

The district court's remedial order left intact major elements of the prior dual system: 66 one-race schools, many of which were operating as one-race schools before the first court-ordered desegregation. The court of appeals properly remanded the case for reconsideration of the remedial order because the record did not establish that the order achieved the greatest degree of desegregation that was practical.

The court of appeals correctly recognized that in a district, like the DISD, with a long history of segregation, there is a presumption against the continued existence of so many one-race schools, and that the DISD had the burden of showing that racial composition of the schools was not the result of its own past segregative actions. Since the DISD failed to carry the burden of showing that its past segregative acts had not affected the remaining one-race schools, the court of appeals correctly remanded the case for reconsideration and further findings to permit the district court accurately to determine the greatest degree of desegregation that would be practical.

The district court stated that desegregation of the all-black East Oak Cliff subsection would be impractical, but the record did not include studies showing that the times and distances for the necessary student transportation (proposed in several plans before the

district court) were too great to be practical. The court of appeals properly remanded the case for specific findings why tools such as pairing and clustering of schools could not be used to desegregate part or all of East Oak Cliff, which contained more than 27,000 black students.

The district Court also stated that desegregation of the high schools would not be practical—even though it ordered desegregation of the smaller junior high schools. Again the court of appeals properly remanded the case for specific findings why the high schools could not, with practicality, be desegregated as well.

The district court concluded that students in grades K through 3 were not mature enough to be assigned anywhere but their neighborhood schools. The district court did not consider whether desegregation of some or all of the one-race elementary schools could be achieved if transportation time were carefully limited because of the students' age. Again, the court of appeals properly remanded the case for more specific findings regarding the feasibility of greater desegregation.

The court of appeals did not err in remanding the case for reconsideration of plans involving more student transportation. The district court's limited use of pairing, clustering, and student transportation—together with its heavy reliance on magnet schools—had not been effective to achieve the desegregation of the DISD's former dual system. Accordingly, the court of appeals properly directed the district court

to consider the feasibility of making greater use of techniques that promised to be effective to dismantle the dual system.

ARGUMENT

I

A SYSTEMWIDE REMEDY IS APPROPRIATE BECAUSE THE BOARD HAS NOT FULFILLED ITS CONTINUING OBLIGATION TO ELIMINATE THE VESTIGES OF THE FORMER DUAL SCHOOL SYSTEM THAT PERSIST THROUGHOUT THE DISTRICT

A. Vestiges of the DISD's dual school system remain throughout the district

Until its repeal on August 5, 1969, Article 7, § 7 of the Texas Constitution required racial segregation in the public schools throughout the State, and Dallas operated a constitutionally and statutorily mandated dual school system both before and after *Brown v. Board of Education*, 347 U.S. 483 (1954) (*Brown I*).²⁴

Although a court-ordered stair-step desegregation plan eliminated separate racial assignment zones for all grades by 1967, new attendance zones were drawn without any effort to encourage integration, and in most cases the schools attended by black students before the implementation of the stair-step order remained all-black.²⁵ Enrollment figures for the 1966-

²⁴ Many state statutes effectuating Article 7 § 7 are set forth in Respondents' Br. at 11-12 n.4.

²⁵ Although there are no school-by-school enrollment figures by race for years prior to 1966-1967, it is possible to identify many schools attended by blacks in earlier years because the faculties were segregated as well and the record includes the all-black faculties in the early 1960's (Answer to Interroga-

1967 school year reveal that the student bodies in 101 of the DISD's 171 schools were either 100% black or 100% Anglo.²⁶

At the time of trial in 1971, this high degree of racial separation persisted. The schools that blacks had attended before 1965 remained virtually all-black. More than 90% of the black students in the DISD attended schools where less than 10% of the students were Anglo, and 63% of the black students attended schools where less than 1% of the students were Anglo (Answers to Plaintiffs' Interrogatories (First Set), App. Vol. 1, filed Nov. 18, 1970). More than two-thirds of the Anglo students attended schools where Anglos made up 90% or more of the student body (*ibid.*). And the Board had made no provision for majority-to-minority transfers (see II Tr. 560-563, 645-647 (1971)).

After conducting a full hearing on the current conditions in the DISD, the district court concluded that the extreme racial separation throughout the

tory 1(d), Answers to Plaintiffs' Interrogatories (First Set), filed Nov. 18, 1970). There were 37 schools that had all-black faculties before 1965. The 1966-1967 enrollment figures for these 37 schools reveal that 29 continued to have black enrollments exceeding 90%, three had closed (Attucks, Eagle Ford, and Starks), and five others had changed to less than 90% black enrollment (Sequoyah, Pinkston, Douglass, Roberts, and Miller). The extent to which the change in these five schools is attributable to enrollment of Mexican-American, rather than Anglo, students is not reflected in the record (see note 26, *infra*).

²⁶ As previously noted (page 4, *supra*, note 3), until the 1967-1968 school year the DISD counted Mexican-American students as white.

DISD was the legacy of the prior dual system that had never been effectively dismantled. The basis for that conclusion was the court's finding (page 9, *supra*) that 119 schools in the DISD were either 90% or more Anglo or 90% or more black and Mexican-American in their enrollments and that 91% of the black students attended predominantly minority schools, while only 3% of the black students attended majority Anglo schools.²⁷

The DISD's faculty assignments also evidenced the continuing effects of the DISD's prior dual system. No effort was made to desegregate the faculty of the DISD during the years the court-ordered stair-step plan was being implemented. Although Superintendent Estes testified that a phased faculty desegregation program affecting 20 schools was adopted in 1968 (II Tr. 455 (1971)), by the time of trial in 1971, 88.8% of the black teachers in the DISD were still assigned to schools where the student body was at least 90% black, and less than 5% of the

²⁷ Petitioners and respondents engage in a heated debate over the question whether the district court found that the DISD was operating a dual system, or merely that there were still vestiges of the prior dual system. The district court did not focus on this distinction and its 1971 liability finding refers to vestiges, whereas its April 7, 1976 supplemental opinion assumes that in 1971 the court found the DISD was operating a dual system (412 F. Supp. 1211).

In our view, the narrow distinction petitioners seek to draw between the vestiges of a dual system and the dual system itself is meaningless where, as here, school officials have taken no action to alter the racial characteristics of the schools that were once segregated and what remained is a system where more than 90% of the black students remain in all-black schools.

black teachers were assigned to schools where 90% or more of the students were Anglo (Plaintiffs' Exhibit 4 (1971)). Only after trial of this case began did the DISD announce a plan to desegregate all its faculty in accordance with the Fifth Circuit's 1969 decision in *Singleton*. As this Court pointed out in *Dayton Board of Education v. Brinkman*, No. 78-627 (July 2, 1979), slip op. 11-12 (*Dayton II*), such continuing faculty segregation is "strong evidence that the Board was continuing its efforts to segregate students." See also *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18 (1971).

The district court correctly rejected the DISD's claim that the racial separation in the schools was not attributable to the lingering effect of state-imposed segregation, but to changes in residential patterns since the institution of the stair-step plan in 1965. Once the plaintiffs have established, as they did here, that the school board's intentional past acts created a dual school system, it becomes the burden of the school authorities to show that the current segregation "is not the result of present or past discriminatory action on their part." *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 26. Where, as here, the record establishes that there has been a dual system, "the systemwide nature of the violation furnishe[s] prima facie proof that current segregation in the * * * schools was caused at least in part by prior intentionally segregative official acts." *Dayton II*, *supra*, slip op. 9.

The evidence introduced by the DISD did not carry this burden. Superintendent Estes testified that be-

tween 1965 and 1970—during and after implementation of the stair-step plan—he believed approximately 19 schools in the district had changed from majority Anglo to majority black and Mexican-American because of changes in residential patterns (II Tr. 514-520 (1971)). As the district court observed, this evidence fell far short of demonstrating that the Board's prior segregative acts had not caused the conditions of racial separation that were still so evident throughout the district, since Estes' testimony accounted for only a fraction of the one-race schools, providing no explanation for the existence of 97 other one-race schools throughout the DISD in 1970-1971, most of which had the same racial composition before and after implementation of the stair-step plan. Moreover, even assuming that changes in residential patterns did influence the racial composition of the 19 schools Estes identified, school segregation—which often contributes to housing segregation—may nevertheless have played an important part in determining the racial composition of the schools. See *Columbus Board of Education v. Penick*, No. 78-610 (July 2, 1979), slip op. 14-15 n.13.

B. The DISD was under a continuing obligation to eliminate these vestiges

1. As this Court reaffirmed most recently last Term in *Columbus Board of Education v. Penick*, *supra*, slip op. 8 (citations omitted), a school system, like the DISD, that has operated dual schools is—

“clearly charged with the affirmative duty to take whatever steps might be necessary to convert to

a unitary system in which racial discrimination would be eliminated root and branch.” * * * Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment.

The DISD's “continuing ‘affirmative duty to dis-establish the dual school system’ is therefore beyond question.” *Columbus Board of Education v. Penick*, *supra*, slip op. 10, quoting *McDaniel v. Barresi*, 402 U.S. 39, 41 (1971).

2. Relying on *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), the Brinegar petitioners contend that the district court erred in focusing on the question whether the one-race schools throughout the district were vestiges of the prior dual system, rather than the question whether the current racial separation in the schools had been caused by the Board's intentionally segregative actions.²⁸ But as this Court's opinion in *Dayton II* makes clear, the DISD had an affirmative duty

²⁸ The record before the Court in *Dayton I* showed only isolated instances of segregative acts in a system where “mandatory segregation by law * * * ha[d] long since ceased.” 433 U.S. at 420. As this Court observed in *Columbus Board of Education v. Penick*, *supra*, slip op. 7 n.7, *Dayton I* held that record was “insufficient to give rise to an inference of system-wide institutional purpose and * * * did not add up to a facially substantial systemwide impact.”

Here, in contrast to the record in *Dayton I*, statutory segregation ceased when the stair-step plan was fully implemented in 1967, less than four years before the district court's liability finding, and almost all of the schools that had been black schools in 1966-1967 were still more than 90% black.

to desegregate, a duty that required it "to do more than abandon its prior discriminatory purpose" (slip op. 11), and the lower courts were "quite justified in utilizing the Board's total failure to fulfill its affirmative duty * * * to trace the current, systemwide segregation back to the purposefully dual system of the 1950's and to the subsequent acts of intentional discrimination" (slip op. 14). *Dayton II* holds "the measure of the post-*Brown* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system" (slip op. 10-11). In the instant case, petitioners concede that the DISD deliberately maintained separate schools for black and white children in Dallas until the mid-1960's. So long as the effects of that intentional conduct remain unremedied, no additional finding of intent is necessary before the court may act to remedy the DISD's perpetuation or aggravation of those effects.²⁹

²⁹ The Brinegar petitioners also rely heavily on this Court's statement in *Washington v. Davis*, 426 U.S. 229, 240-248 (1976), that evidence of a racially discriminatory purpose is necessary to prove a violation of the Equal Protection Clause. *Davis* is fully consistent with *Dayton II*. The Brinegar petitioners overlook the portion of the *Davis* opinion stating that where there is an unremedied purposeful violation of equal protection, subsequent related conduct would be unconstitutional if it has an impact which perpetuates the past discrimination or if it was performed with a discriminatory purpose. Citing *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972), the *Davis* opinion explained, 426 U.S. at 243, that no independent showing of invidious intent underlying the

3. The Board's affirmative duty was not, as the Curry petitioners contend (Curry Br. 17-21), satisfied by the implementation of the court-ordered stair-step plan. The Fifth Circuit pointed out in its opinion on the first appeal that the stair-step plan was a limited remedy that replaced overtly racial student assignments with a "neighborhood school" policy, but was not designed to eliminate all vestiges of state-imposed segregation (*Tasby v. Estes, supra*, 517 F.2d at 95):

The "stair-step" desegregation process we directed in 1960 and implemented by the DISD the following year merely involved the elimination of racial criteria for the admission of students to the DISD's schools. The DISD was not directed to take affirmative action to remove the vestiges of its formerly statutorily-required dual education system through such techniques as "freedom-of-choice", "pairing", or "majority-to-minority transfer program." In fact the DISD took no further steps to eliminate the traces of segregation than required to do by the terms of our 1965 desegregation order.

As this Court stated in *Green v. County School Board, supra*, 391 U.S. at 437, "[i]n the context of the state-imposed segregated pattern of long standing," the fact that a school board has "opened the doors of the

school district's decision to divide and form a new district was necessary in *Wright*, where the effect of that action was to undermine a court-ordered plan to remedy purposeful discrimination previously found in the Emporia public schools. The same general principle was reaffirmed in *Dayton II*.

former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system."

The circumstances of this case are much like those of *Swann v. Charlotte-Mecklenburg Board of Education, supra*. As this Court recently noted in *Columbus Board of Education v. Penick, supra*, slip op. 9, "an initial [de]segregation plan had been entered [in *Swann*] in 1965 and had been affirmed on appeal. But the case was reopened, and in 1969 the school board was required to come forth with a more effective plan." In *Swann*, as here, the earlier remedial order did not fulfill the Board's obligation because it "fell short of achieving [a] unitary school system." 402 U.S. at 7. Although the racially neutral geographic zoning plan had been in force for several years, two-thirds of all black students were still attending schools where 99% or more of the student body was black (*ibid.*).³⁰ Accordingly, it was necessary to implement a more effective desegregation plan.

As we have shown, *supra* at pages 28-31, the DISD's racially neutral zoning plan was equally ineffective in eliminating the effects of the prior system of segre-

³⁰ Similarly, in *Green v. County School Board, supra*, 391 U.S. at 441, the Court found the school board's adoption of a freedom of choice student enrollment plan had not satisfied its obligations when after three years of operation, 85% of the black students were still in a one-race school.

gation, and accordingly the DISD's duty had not been satisfied.³¹

4. The Curry petitioners also contend (Curry Br. 30) that the far North Dallas area where they reside was settled after *Brown I*, and that the district court erred in including North Dallas in its remedial plan because the racial composition of the schools in that area was solely the result of predominantly white residential settlement, not the DISD's segregative actions.³²

³¹ This is clearly not a case like *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976), where the district court had implemented a comprehensive scheme that effectively desegregated the student bodies of every school throughout the district, and then ordered the school board to take further action to realign attendance boundaries from year to year in order to maintain a permanent racial balance throughout the district. *Pasadena* follows up on the Court's cautionary comment in *Swann* that "[n]either school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." 427 U.S. at 436, quoting *Swann, supra*, 402 U.S. at 31-32. But here, as in *Swann* itself, a second remedial order is necessary where an apparently neutral assignment plan has been insufficient to counteract the continuing effects of past school segregation. 402 U.S. at 28. See also *University of California Regents v. Bakke*, 438 U.S. 265, 300-302 (1978) (opinion of Powell, J.), 353-355 (opinion of Brennan, White, Marshall, and Blackmun, JJ.); *United Jewish Organizations v. Carey*, 430 U.S. 144, 159-161 (1977) (opinion of White, J.); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425, 435 (1975).

³² The court of appeals rejected a similar claim by the Curry petitioners on the first appeal (*Tasby v. Estes, supra*, 517 F.2d at 108).

The record does not support this claim. It establishes that all but one of the eight schools in the far North Dallas area were established as one-race schools before full implementation of the stair-step plan that was the first step toward eliminating the dual system in the DISD.³³ All but one of these schools opened with all-white faculties between 1958 and 1965,³⁴ and all but one had more than 90% white enrollment during the 1966-1967 school year, the first year for which enrollment data by race are available.³⁵ The remaining school, Nathan Adams, opened in the 1967-1968 school year with a more than 90% white enrollment and an all-white faculty.³⁶ Since the far North Dallas schools were thus part of the dual system operated by the DISD, the district court did not err in including those schools in its remedial order.³⁷

³³ The schools are Nathan Adams, Cabell, Degolyer, Gooch, Marcus, Withers, and Marsh Junior High Schools, and W. T. White High School.

³⁴ Answer to Interrogatory 1(d), Answers to Plaintiffs' Interrogatories (First Set) App. Vol. 4, filed Nov. 18, 1970.

³⁵ Answers to Plaintiffs' Interrogatories (First Set) App. Vol. 4, filed Nov. 18, 1970.

³⁶ *Ibid.*

³⁷ There is no merit to the Curry petitioners' contention (Curry Br. 30) that the district court made a finding that their schools were not affected by the DISD's segregative acts. The following passage, on which the Curry petitioners base their argument, is simply a general statement about the difficulty of constructing a remedial order; the district court was discussing the question of remedy rather than violation and was not referring specifically to North Dallas or to any particular section of the city (342 F. Supp. at 951):

The adoption of a plan of desegregation for a school system of the size and complexity of DISD has been

II

THE COURT OF APPEALS PROPERLY REMANDED THE CASE FOR CONSIDERATION OF THE FEASIBILITY OF DESEGREGATING THE REMAINING ONE-RACE SCHOOLS

In a school desegregation case, "[a]s with any equity case, the nature of the violation determines the scope of the remedy." *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 16. See *Dayton I*, *supra*, 433 U.S. at 420. Where, as here, the condition that violates the Constitution is the creation of a dual system, with separate schools for black and white students, the appropriate remedy is conversion to a unitary system where there are no longer black schools or white schools, but "just schools." *Green v. County School Board*, *supra*, 391 U.S. at 442. In effecting that conversion, the goal is "to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis v. Board of School Commissioners*, 402 U.S. 33, 37 (1971). The obligation imposed by the Constitution, however, "does not mean that every school in every community must always reflect the racial composition of the school system as a whole." *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 24.

The court of appeals faithfully applied these principles in reviewing the district court's remedial or-

commented upon briefly. The problems result, of course, from private housing patterns that have come into existence and not from any action of the DISD.

der. It remanded for further consideration of the student assignment provisions—which left intact major elements of the prior dual system—because the record did not establish that those provisions would accomplish the maximum desegregation practical in the circumstances.³⁸

³⁸ Despite petitioners' criticisms of the court of appeals (see Brinegar Br. 28), it is clear that that court did not order the district court to eliminate all one-race schools, and did not exceed the proper bounds of appellate review. The court of appeals expressly recognized the possibility that the district court's revised student assignment plan might include some one-race schools, and accordingly it remanded not only "for the formulation of a new student assignment plan," but also "for findings to justify the maintenance of any one-race schools that may be a part of that plan" (Pet. App. 145a). By remanding to the district court for further findings and reformulation of the student assignment plan, the court of appeals scrupulously adhered to the proper role of an appellate court. It attempted to review the district court's findings in support of its remedial order, and, upon determining that the district court's generalized findings were insufficient, it remanded the case for further findings and reformulation of the plan instead of instituting its own more sweeping remedy. Cf. *Dayton I*, *supra*, 433 U.S. at 417-418.

Petitioners also criticize the length, delay, and uncertainty that often characterizes school desegregation litigation. But these problems do not stem from the courts. The cases where there have been excessively long delays have generally involved school districts that have operated dual systems for decades and that have been grudging—if not recalcitrant—in converting to a unitary system. In this case, for example, six appeals were required before the school district implemented the stair-step plan and ceased using racial criteria to make student assignments. See *supra* pages 4-5, note 4.

The district court's order left intact 66 one-race schools, most of which were operating as one-race schools in 1965 before the DISD began to implement the first court-ordered desegregation of its statutory dual system. The court's plan divided the DISD into six subdistricts, one of which—East Oak Cliff—"is nearly all black and contains only one-race schools" (Pet. App. 132a). The plan provided that except for those who elect to exercise the option of majority-to-minority transfers, all of the more than 27,500 students in the subdistrict would continue to attend the all-black schools located within the subdistrict. Outside of East Oak Cliff, the district court's plan left 50 one-race high schools and elementary schools for grades K through 3; only in grades 4 through 8 was nearly complete desegregation achieved by the use of techniques such as pairing and clustering. Despite the integration of grades 4 through 8, the majority of black students in the DISD—59%—remained isolated in one-race schools both before and after implementation of the district court's plan.

The court of appeals correctly recognized (Pet. App. 137a) that the continued existence of so many one-race schools required special scrutiny of the district court's plan, and that such schools could be maintained only to the extent that the practicalities of the situation prevent their desegregation. As this Court explained in *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 26, the existence of one-race schools "is not in and of itself the mark of a system that still practices segregation

by law," but in a system, like the DISD, where there has been a long history of segregation, there is "a presumption against schools that are substantially disproportionate in their racial composition":

Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action.

The court of appeals properly remanded the case because the record before it was insufficient to establish that the 66 one-race schools left intact under the district court's plan had not resulted from the DISD's past and present segregative acts, or that the desegregation of some or all of the schools was impractical.³⁹

³⁹ Petitioners attack the remedial principles of the *Swann* decision. But in view of this Court's reaffirmance of those principles in *Columbus Board of Education v. Penick*, *supra*, slip op. 8-9, we will not offer an elaborate defense of that decision. We note, however, that the principles of *Swann* and its companion case, *Davis v. Board of School Commissioners*, 402 U.S. 33 (1971), have served well over the past eight years in guiding courts and school districts in desegregating numerous schools. Since hundreds of school districts with a combined enrollment in the hundreds of thousands are presently operating under court-ordered desegregation plans based on *Swann*, overruling or limiting *Swann* would call into ques-

A. The East Oak Cliff Subdistrict

1. The record before the district court included testimony that plaintiffs' plan A and the N.A.A.C.P. plan were designed to desegregate all of the East Oak Cliff schools (III Tr. 293 (1976); IV Tr. 41 (1976)). The NAACP plan would have employed bus trips, in each direction, of approximately 40 minutes to accomplish this (IV Tr. 53-54 (1976)). Plaintiffs' plan B was designed to desegregate more than half of the East Oak Cliff schools with maximum bus trips, in each direction, of 30 minutes (III Tr. 261 (1976)). The district court made no findings on the practicality of any of these plans. It nevertheless held (Pet. App. 31a) that no desegregation of the many all-black schools throughout the East Oak Cliff subdistrict could be accomplished "given the practicalities of time and distance, and the fact that the DISD is minority Anglo."

On appeal, the Fifth Circuit found (Pet. App. 137a) that the record included "no adequate-time-and-distance studies" to permit it to evaluate the district court's generalized finding that no desegregation of East Oak Cliff was practical. Accordingly, the court of appeals concluded (*ibid.*) that it had "no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still

tion the validity of every one of these plans. *Stare decisis* carries more than its ordinary force here, where the original rule is well-grounded in logic and equity, has proven fair and workable, and has not been shown to lead to an unjust result.

existing." The court of appeals therefore remanded the case for more specific findings that would allow the appellate court to determine whether the remedial decree achieved the maximum degree of desegregation that would be practical. The remand order was necessary to permit both the district court and the court of appeals to perform their respective functions. See *Dayton I, supra*, 433 U.S. at 417-419; *Brown v. Board of Education*, 349 U.S. 294, 299-300 (1955).

2. The Curry petitioners suggest a second ground—not relied upon by the district court—for excluding the East Oak Cliff schools from any remedial order.⁴⁰ They argue that the all-black schools throughout East Oak Cliff are the result of residential segregation, not the actions of the DISD. The only evidence supporting this claim is Superintendent Estes' testimony that 19 schools—among them 12 of the 26 schools in East Oak Cliff—had become all-black between 1965

⁴⁰ The district court grounded its decision not to extend its remedial order to the East Oak Cliff schools solely on "the practicalities of time and distance, and the fact that the DISD is minority Anglo" (Pet. App. 31a). The Curry petitioners nevertheless contend (Curry Br. 9-10, 29) that in its August 17, 1971 order, partially staying an earlier order, the district court found that the primary cause for the one-race schools in East Oak Cliff was residential segregation. Petitioners make far too much of this comment, on which the district court itself did not subsequently rely. Indeed, the district court could not properly have relied on such a finding to deny relief throughout the subdistrict since the only evidence that might conceivably support such a finding related to some—but not all—of the schools in the subdistrict. See pages 44-45, *infra*.

and 1970 because of residential changes (II Tr. 514-520 (1971)).

The DISD introduced Estes' testimony in an effort to show that the DISD was not responsible for any of the current segregation throughout the school district. The district court rejected this argument on grounds that answer as well the Curry petitioners' more limited argument regarding East Oak Cliff. The district court found Superintendent Estes' testimony about 19 of the more than 170 schools in the district unpersuasive because it provided no explanation whatsoever for the existence of 97 other one-race schools throughout the DISD. Similarly, as applied to East Oak Cliff alone, Estes' testimony is unpersuasive because it provides no explanation for the majority of the schools in East Oak Cliff, including many schools that were black schools before the first court-ordered desegregation.⁴¹

Moreover, evidence that black residents moved to an area, such as East Oak Cliff, including an enclave of schools designated for many years as black schools in a dual school district does not prove that the schools affected by the changes in residential patterns were not also affected by the longstanding pattern of segregation in the schools. Particularly where, as here, the dual system had not been completely dismantled, this evidence of residential change

⁴¹ Nine schools in East Oak Cliff are identifiable as black schools before 1965 because they had all-black faculties, including some that opened with all-white faculties and were subsequently converted to all-black faculties (see Respondents' Br. 81 n.47 for a listing of these schools).

affecting some schools would not overcome the presumption against the continuance of one-race schools. See *Columbus Board of Education v. Penick*, *supra*, slip op. 14-15 n.13.

B. Grades 9-12, K-3 outside East Oak Cliff

1. The district court also made a general finding that it would not be feasible to reassign students in order to desegregate any of the one-race high schools throughout the city (Pet. App. 33a-35a). But as the court of appeals pointed out (Pet. App. 137a), this finding seems to be clearly at odds with the district court's conclusion that it was feasible to desegregate the junior high schools throughout the district. Under the district court's plan, the high schools generally had substantially larger enrollments and drew students from larger geographic areas than the junior high schools (compare Pet. App. 88a, 95a, 102a, 109a, and 115a with 90a, 97a, 104a, 111a, and 117a).⁴² The district court's plan used pairing, clustering, and transportation of students to desegregate the smaller schools serving the seventh and eighth grades, yet the district court found—without further explanation—that it could not desegregate the larger high school districts. As a logical matter, however, desegregation of the high schools should have been an easier task, since they served larger geographic areas.

Finding that the district court's failure to desegregate the high schools left one-race schools in three of

⁴² Grades 7 through 12 are combined in Seagoville sub-district (Pet. App. 119a).

the five integrated subdistricts, the court of appeals again directed the district court "to evaluate the feasibility of adopting the *Swann* desegregation tools for these schools, and to reevaluate the effectiveness of the magnet school concept" (Pet. App. 138a; footnote omitted). Mindful of the generalized nature of the findings in the opinion before it, the court of appeals stressed (*ibid.*) that "[i]f the district court determines that the utilization of pairing, clustering, or the other desegregation tools is not practicable in the DISD, then the district court must make specific findings to that effect." In view of the district court's failure to make the findings necessary to support the conclusion that desegregation of the high schools throughout the DISD was not practical, this portion of the remand order was also fully justified.

2. Finally, the district court observed (Pet. App. 32a) that Superintendent Estes had testified that children in grades K through 3 should be allowed to attend their neighborhood schools because they "had not matured sufficiently to cope with the problems of safety and fatigue associated with significant transportation." The court held (*ibid.*) that "this conclusion is sound, in terms of age, health, and safety of children in grades K-3," and accordingly the court excluded those grades from its desegregation plan.

In making this generalized finding, the district court took no account of the fact that some of the elementary attendance zones in the DISD were quite large and some pupils were already being trans-

ported (II Tr. 452 (1971)). Nor did the district court consider the possibility of using pairing and clustering and allowing the transportation of students in grades K through 3, but placing stricter limitations on travel time for children in the lower grades. And the record included no time and distance studies showing that desegregation of students in grades K-3 would be impractical if travel times were carefully limited because of the students' age.

The district court's plan left intact 53 elementary schools in which grades K through 3 were in excess of 90% Anglo or 90% minority. This group includes 21 schools outside East Oak Cliff that have had an enrollment of black students, or of black and Mexican-American students, in excess of 90% since 1966-1967, the first year for which the DISD supplied enrollment data by race.⁴³ Since the district court's general findings were insufficient to show that it would not be practical to desegregate some or all of these one-race elementary schools, the court of appeals' remand for reconsideration and more specific findings as to these schools was appropriate.

C. The use of student transportation

The Curry petitioners contend (Curry Br. 31-49) that the district court erred in approving the use of student transportation (or "mandatory busing"), and that the court of appeals compounded this error by remanding the case for consideration of techniques

⁴³ See note 19, *supra*.

that would require still more student transportation. Both they and the DISD argue that busing encourages white flight, thereby increasing racial isolation, and does not improve academic achievement on the part of minority students.⁴⁴ Respondents introduced substantial evidence controverting the Curry petitioners' claims, including evidence that student transportation does not have an adverse educational impact (IX Tr. 290-291 (1976) (testimony of Dr. Evans); IX Tr. 354-355 (1976) (testimony of Dr. Feagin)).

The district court properly declined (Pet. App. 34a n.50) to resolve the so-called "battle of the sociological experts," observing that *Brown v. Board of Education, supra*, 349 U.S. at 300, establishes that "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement

⁴⁴ The Curry petitioners also argue (Curry Br. 31) that the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701 *et seq.*, "prohibit[s] [the] imposition of busing as a so-called remedial action to attain racial balances in schools." The Equal Educational Opportunities Act does provide that "[t]he failure of an educational agency to attain a balance, on the basis of race * * * of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws," 20 U.S.C. 1704, but the Act does not relieve school officials of their duty to convert a dual system—with separate schools for white and black students—into a unitary system. To the contrary, Section 204 of the Act, 20 U.S.C. 1703, provides that "[n]o State shall deny equal educational opportunity to an individual on account of his or her race * * *, by—* * * (b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this subchapter, to remove the vestiges of a dual school system."

with them." The district court also recognized (Pet. App. 34a n.50) that this Court's prior opinions require the adoption of "the plan which promises realistically to be most effective." See *United States v. Scotland Neck City Board of Education*, 407 U.S. 484, 491 (1972).

Despite the district court's hope that the magnet schools would be an effective means of desegregation, in 1979, three years after adoption of the district court's plan, less than 10% of the high school students in the DISD attended magnet schools (1979 DISD Report to the District Court). Since the portions of the district court's plan that did not include student reassignments were not achieving desegregation, the court of appeals properly required the district court to reassess the effectiveness of magnet schools and to consider the feasibility of using techniques, including student transportation, that had been effective in many other cases to convert dual school systems to unitary systems free of the vestiges of state-imposed segregation. Since *Swann* this Court has consistently approved the district courts' use of student transportation as one tool to achieve desegregation when "a constitutional violation of sufficient magnitude has been found," *Columbus Board of Education, supra*, slip op. 2 (Burger, C.J., concurring), and it should continue to do so unless the parties propose other means that will achieve as much or more desegregation. Petitioners have failed to do so here.

Moreover, petitioners' attack on the use of busing as a remedy is premature where, as here, no final order has been approved and the degree of student

transportation that will be required has not yet been determined.

The Brinegar petitioners urge (Brinegar Br. 35-41) that the plan ultimately adopted by the district court should not require student reassignments and transportation in the residentially integrated area where they reside. This contention is also premature, since petitioners themselves concede (Brinegar Br. 36) that the district court has to date attempted to leave neighborhood schools intact in residentially integrated areas. Moreover, the court of appeals' remand does not jeopardize the continued existence of these neighborhood schools so long as the DISD implements a plan that effectively eliminates the remaining vestiges of the dual system where those vestiges still exist.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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No. 78-283

RALPH F. BRINEGAR, ET AL.,

Petitioners,

versus

DALLAS N.A.A.C.P., ET AL.,

Respondents.

Motion for Leave to File Brief Amicus Curiae and
Brief of Amicus Curiae
The Dallas Alliance and
The Education Task Force of the Dallas Alliance

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MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE FOR
THE DALLAS ALLIANCE AND THE
EDUCATION TASK FORCE OF THE DALLAS ALLIANCE

MOTION FOR LEAVE
TO FILE BRIEF AMICUS CURIAE

The Dallas Alliance and the Education Task Force of the Dallas Alliance hereby respectfully move for leave to file the attached Brief Amicus Curiae in this case pursuant to Rule 42 of this Court. The consent of attorneys for the petitioners and for the respondents, Tasby, et al, has been obtained and the letters have been deposited with the Clerk. The consent of the attorney for the respondent NAACP was requested but refused.

The Dallas Alliance is a service organization designed to encourage cooperation and combined effort of community groups in seeking resolution of urban problems affecting the Dallas community. The Alliance is comprised of a 40-member Board of Trustees drawn from local government, the business sector, and the community at large. The Board's racial composition reflects the ethnic makeup of the city's population. In addition, approximately 90 community organizations are affiliated with the Alliance, designated as community correspondent organizations.

The Education Task Force of the Dallas Alliance was formed in October, 1975. Consisting of seven Anglos, seven Mexican-Americans, six Blacks and one American Indian, the group's mission was the creation of a consensus school desegregation plan which would be constitutionally acceptable. The Task Force im-

mediately commenced an energetic and exhaustive involvement in the drafting process. After more than four months and 1500 work hours, including numerous conferences with leading educators throughout the Nation, the Task Force was able to agree on a consensus plan. This plan was then submitted to the district court in the middle of the month of remedy hearings. The district judge subsequently adopted the plan of the Task Force (with modifications) as his final order in the case.

In both the district court and the Court of Appeals for the Fifth Circuit the Task Force has participated as *Amicus Curiae* in support of the consensus plan. The Task Force's familiarity with this case, with DISD, and with the concepts the district judge ordered place it in a unique position to be of assistance in fleshing out the issues involved in this complex urban desegregation suit. Furthermore, the Task Force believes it likely that the other briefs may argue this case on grounds broader than necessary for an appropriate resolution of the controversy.

Therefore, The Dallas Alliance and the Education Task Force of the Dallas Alliance respectfully move for leave to file the attached Brief *Amicus Curiae*.

Respectfully submitted,

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INTEREST OF AMICUS CURIAE

The Dallas Alliance is a service organization designed to encourage cooperation and combined effort of community groups in seeking resolution of urban problems affecting the Dallas community. The Alliance is comprised of a 40-member Board of Trustees drawn from local government, the business sector, and the community at large. The Board's racial composition reflects the ethnic makeup of the city's population. In addition, numerous community organizations are affiliated with the Alliance, designated as community correspondent organizations. (A list appears in Appendix C).

As stated in greater detail in the Motion for Leave to File Brief *Amicus Curiae*, the Education Task Force of the Dallas Alliance is a tri-ethnic group that labored for 1500 hours in developing the consensus plan that was subsequently adopted by the district court in its final order.

INTRODUCTION AND STATEMENT OF THE CASE

A. The Narrow Issue

The most far-reaching issue presented in this litigation and briefed to the Court is an issue which neither the district court nor the Court of Appeals decided: whether the principles of *Washington v. Davis*, 426 U.S. 229 (1976) should be interjected into school desegrega-

tion litigation in the urban South. Not only was this issue not faced below, it need not be faced here. Instead this case may be decided on the very traditional grounds of the discretion of a district judge. To say that the issue is traditional, however, is hardly to trivialize it. The vast urban setting of the eighth largest school system in the United States heightens its importance and provides a unique focus for exploring the parameters of informed discretion.

Brown v. Board of Education II, 349 U.S. 294 (1955) placed a special burden on district judges. Not only were they to be in the vanguard of Southern desegregation, but in so doing they were to demonstrate "a practical flexibility in shaping remedies and . . . a facility for adjusting and reconciling public and private needs." *Id.* at 300. The duty to reconcile has lost none of its importance over time even though the context for the application of the duty has changed markedly. Thus, thanks to *Green v. New Kent County School Board*, 391 U.S. 430 (1968) and its immediate progeny, by 1970 rural desegregation was complete. But the harder task, that of desegregating the urban systems was barely beginning. The cries of nullification and interposition from Louisiana and Virginia had been stilled only to be replaced by the shouts from Boston and Louisville. The quaint names of the rural South vanished, to be replaced by the more familiar nomenclature of urban America: Charlotte, Mobile, Denver, Detroit, Pasadena, Dayton. But still, throughout all the changes, it remains the federal district judges who bear

the primary burden of implementing the appropriate constitutional principles. To them falls the often thankless work: to "grapple with the flinty, intractable realities of day-to-day implementation" of school desegregation. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 6 (1971).

A district judge, however, must do more than grapple. He must decide. And in so doing he must implement a desegregation plan that "promises realistically to work." *Green*, 391 U.S. at 439. In a large, urban, tri-ethnic community such as Dallas, where thousands of citizens are relocating their homes annually, the appropriate choices are hardly self-evident. Yet they must be made.

The starting point for any desegregation plan is determining where the children live. This litigation has been protracted and each time the case has come before the district court substantial demographic changes have occurred. If nothing else, Dallas has been an urban boom town. A brief look at its demographic history is essential for understanding the setting.

B. Demographic History of Dallas

In the thirty year period (1940-1970) Dallas changed radically. There were population changes in size, location, economic characteristics, composition by race and ethnicity, as well as school age population characteristics. To a large extent Dallas is a new city, suburban in its development pattern with single, detached dwelling units being the dominant form of

housing until very recently. Population densities by tract are low in comparison with northeastern and even other southern cities.

Since 1940 the physical size of the city and DISD have both quadrupled to well over 350 square miles of territory. The growth came largely in two major spurts, one in the early 1950's and the other in the early 1960's.

To understand this growth in physical size and population some understanding of the physical and social geography is necessary. The core of the city is along the Trinity River. On the north side of the river the land is flat and in 1940 most (75%) of this area was planted in cotton in farm plats of approximately 80 to 100 acres. To the south is the Oak Cliff area which has rocky soil and a hilly type of terrain not suitable for industry or agriculture.

1. Black Movement — 1940-70

In 1940 75% of the small Black population lived in two areas of the city: immediately to the north of the Central Business District and to the far southeast of the Central Business District.¹ Both of these areas are now completely surrounded by new areas. The remaining 25% of the Black population was more dispersed and only 10 of the 58 tracts in the city at that time had fewer than 1% Black population.²

¹ Plates of Dallas in 1940, 1950, 1960, and 1970 showing racial percentages are in Appendix A.

² Census tract statistics are in Appendix B.

The pattern of racial location in 1950 remained essentially the same with the exception of major territorial annexation to the north and south with many more Anglo tracts.

In 1957 a major annexation of a West Dallas district occurred. This area had two barrio areas, few Anglos and substantial Blacks. At the time of annexation this area, located in the west between Oak Cliff and North Dallas, had less than 11% of the housing above code, only 2 miles of paved streets, one 60 year-old school building, no parks, no sewers, no storm drains.

During the huge growth of the 1950's the city's population and territory more than doubled. Black location concentration moved into the area identified as South Dallas (just north of the Trinity River). This was an older area being abandoned by Anglos moving to the far north of Dallas. A concentrated group of census tracts changed during the 1950's from Anglo to Black.³ While Black population was doubling, the rapidly expanding Anglo population resulted in the DISD being 15-20% Black.

The area known as East Oak Cliff had 65% of its present housing built during this period. It was in 1960 a series of suburban type development subdivisions. Black residents were in two zones of this area of the city — in the older housing in far northeast Oak Cliff directly across the Trinity River from South Dallas on the only bridge and to the far south where Bishop College was placed after moving from Marshall, Texas.

³ Tracts 28, 29, 33, 34, 36, 38, 39.02, 40 and 41.

Within a three year period of the 1960's a tremendous change, one with no Northern or Eastern city comparisons, took place in the recently developed subdivisions of East Oak Cliff — the area south of the river and east of Interstate 35E. While originally built for and marketed to Anglos, the average Anglo occupancy was but 2.3 years. Almost two dozen census tracts in the area shift from 90% Anglo to 90% Black.⁴ Six of these tracts did not exist in 1940; four did not exist until 1970. In effect a new area of the city, with new schools, new streets, new shopping centers (the first two major centers in Dallas were built in this area) went from Anglo to Black overnight.

2. *Anglo Movement — 1940-70*

Anglo movements in this 30 year period show a different pattern to the fringes of the city — far northwest, northeast, east (Pleasant Grove) and far southwest. The growth was phenomenal and demonstrates the recency and amount of post-war affluence in Dallas. While Blacks were coming from Louisiana and East Texas rural areas, for working class opportunities, Anglo Dallas in its affluence was coming from the upper midwest for corporate and financial opportunities. This wealth concentrated in the far north area and is, again, in housing not even there in 1950. Further, tremendous suburban expansion, predominantly Anglo, took place around the city.

⁴ Tracts 49, 54, 55, 56, 57, 59.01, 59.02, 71.02, 86, 87.01, 87.02, 88, 89, 103, 104, 112, 113, 114.01, 114.02, 167.01, 169.01.

3. *Mexican American Movement — 1940-70*

While there is no census data on Mexican American location, an area north of the Central Business District by 1940 was called "Little Mexico" and the few Mexican Americans in Dallas were concentrated there. Most of the Mexican American population has come to Dallas during the current decade and is concentrated in an arc from West Dallas to East Dallas directly north of the Central Business District.

4. *The Present*

In the period 1970-1975 racial data from the census are not available. Public school data, the Department of Urban Planning, and Real Estate Board reports do provide some insights. First, the city's and DISD's expansion in territory and overall population is completed. The suburban ring exists. Second, population densities have been increasing with many huge apartment complexes. Over 50% of all housing starts during this period were multi-party structures. This proportion is much higher today. Third and most importantly, the Anglo school district population in the past decade has shifted from 63% to approximately 35%. In elementary ages it is even lower. At first blush it is difficult to comprehend how the city's population remains majority Anglo while the Anglo percentage in DISD keeps dropping. The reason is the cost of housing in the Anglo areas of far North Dallas. In Northwest Dallas housing built from 1957-1961 sold originally for \$28 to \$31,000. The average age of the head of the household was 31 with 3 children, elementary age. Today these

same homes sell for \$70 to \$180,000 with average age of the head of the household being 52, 3 children, 1 high school age, and the other 2 already gone.

The demographic picture of Dallas makes clear the enormity of the task facing a district judge. Unlike many cities where whites ring a black core and pie shaped wedges will accomplish considerable racial mixing,⁵ Dallas has great physical separation of Blacks from most Anglos by, first, the Trinity River, second, the Central Business District, and finally by a Mexican American arc. From far South Dallas (e.g., South Oak Cliff or Zumwalt schools) to far North Dallas (W. T. White or Dealey schools) is approximately a 50 minute drive by car on Sunday. Yet the Black population is largely in South Dallas and the Anglos are in the far north.⁶ The problem is exacerbated by the low densities of Anglo children (except for the naturally integrated Pleasant Grove) and the band of Mexican American settlements between the Anglos and the Blacks.

C. *The District Court's Plan*

How, then, to desegregate? Between plaintiffs, defendants, intervenors, amicus, and even students there were numerous theories and several carefully prepared plans. When the month of hearings ended in March 1976, Judge Taylor had before him six major

⁵ E.g., Charlotte-Mecklenburg.

⁶ Housing costs, occupational demands, and convenience make it clear Anglos will continue to occupy the far north of the city. It is less clear how long they will remain in the southwest and southeast.

plans for achieving a unitary school system. As would be expected deep divisions existed among them on the amount of busing to be ordered.⁷ Beyond that, however, there were a surprising number of common points in most of the plans: The huge district should be divided into more manageable subdistricts,⁸ each of which should reflect the ethnic mix of the district as a whole; naturally integrated areas (not more than 75% Anglo or 75% Black and Mexican American combined) should be preserved;⁹ magnet schools, such as the nationally renowned Skyline in Pleasant Grove, should be created to accomplish desegregation in the high school grades;¹⁰ East Oak Cliff, because of geography and the location of naturally integrated areas, might remain unchanged.¹¹ Additionally, there were middle points about which some of the parties appeared to care more than others. These included accountability mechanisms and the use of desegregation tools beyond transportation.

7 The highest was Plaintiffs' Plan A at 69,000; the lowest was DISD at 14,000.

8 On this point there was less agreement since the polarity of the NAACP and DISD Plans led each to reject subdividing. Subdividing was present and heavily stressed in both plans of Plaintiffs and the Dallas Alliance Plan.

9 Judge Taylor noted "as all parties recognized, there would be no benefit educational or otherwise in disturbing this trend toward residential integration." 412 F. Supp. 1192, 1206.

10 Everyone supported the magnet concept.

11 Only the NAACP and Plaintiffs' Plan A disagreed.

The district court, in fashioning an order, incorporated not only the common desegregation tools that were tendered in each of the plans but adopted some new and innovative tools that appear necessary for an urban school district plan that is majority minority.

The district court's final order of April 7, 1976, divided the school district into six subdistricts. This configuration was to preserve the naturally integrated areas; heighten parental involvement; achieve maximum desegregation within each subdistrict; facilitate administration and student assignment.

As a means of facilitating student assignment for desegregation purposes as well as to insure maximum utilization of existing facilities, the judge standardized the grades throughout the district.¹² This standardization provided for the establishment of K-3 Early Childhood Education Centers that were required to use the Diagnostic Prescriptive concept that had proven successful in California with respect to parental involvement.¹³ Special programming was included in the 4-6 Vanguard schools and the 7-8 Academies. The magnet concept was employed at the 9-12 high school level.

12 "In a good school desegregation plan: [there is] . . . (d) a uniform grade structure [that] facilitates interchange between and easy access to all units or schools within the system." Willie, *The Sociology of Urban Education*, 60, Lexington Books of D.C., Heath Company (1978). Contrast the proposals of Plaintiffs' Plan A and B which respectively have 14 and 9 different grade structures for elementary schools.

13 Thus, the order looked to using parents in the requirement to move as rapidly as possible to a 1-10 adult-student ratio in the Early Childhood Education Centers. 412 F. Supp. at 1214.

The court recognized its charge as being one of providing an equal educational opportunity to all students within the district by desegregating the district to the maximum extent practicable. One of the desegregation tools employed was student assignment. Once the judge had carved out the naturally integrated areas and divided the district into subdistricts that reflected the approximate racial ratio of the entire school district, except for East Oak Cliff and Seagoville,¹⁴ there were few options remaining. To facilitate the necessary parental involvement, students that were in the K-3 grades were assigned to schools within two miles of their home if possible. Students in grades 4-8 were assigned to centers in areas of centrality within their subdistrict which generally reflected an ethnic balance (except for East Oak Cliff). To provide maximum desegregation in all new special programs such as the 4-6 Vanguard, the 7-8 Academies and the 9-12 magnets, the court required that the enrollment in each of these special schools reflect the racial makeup of the grade level.

The judge in this case, recognizing the instability and ineffectiveness of the sole employment of a student assignment tool, elected to go further in his remedial order. He adopted a variety of desegregation techniques. Some, of course, are reasonably familiar. E.g., *The Singleton v. Jackson Municipal Separate School District*,

¹⁴ Seagoville, an area of blue collar Anglos, was made a separate subdistrict because of its geographical isolation from the rest of DISD. It lies in the far southeast, and although Seagoville is 81.5% Anglo, it contains less than 2% of DISD's student population. The nearest pocket of Blacks is 15 miles distant.

419 F. 2d 1211 (CA 5 1970) order on personnel.¹⁵ Others, however, have not heretofore been established as universal remedies. It was here, drawing on the compromise efforts of the Education Task Force of the Dallas Alliance, that the plan best reflected the nature of the community. Because of the Mexican American children, bilingual and multi-cultural education were needed as well as minority to majority transfers for Mexican Americans.¹⁶ Special programs for all, including career education, curriculum transfers for the physically handicapped, mentally retarded and highly gifted were included. To ensure an ethnic mix at the very top of the system a recruiting and employment requirement to employ Blacks and Mexican Americans in administrative posts according to their percent of the population was ordered. In addition both an internal and external accountability systems were ordered.

¹⁵ The other familiar techniques included: majority to minority transfer; authorization to the district to modify attendance zones to further promote desegregation; establishment of new facilities in areas that will promote and enhance desegregation; the establishment of a tri-ethnic committee to report to the court on a continual basis; a discipline and due process policy; and retention of jurisdiction.

The Fifth Circuit held that Judge Taylor erred in failing to require DISD to assume the burden of providing transportation to those students electing to choose majority to minority transfer. The inclusion of such a provision in an order is not a matter of discretion, *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26-27 (1971), and the Fifth Circuit was hyper-technical in its reading of Part X of the order. The Dallas Alliance's Plan intended DISD to assume the burden; part X (3) of the order requires DISD to assume the burden; and in fact DISD is assuming the burden and has done so from the time of the order.

¹⁶ "Mexican Americans who comprise less than five percent of the school to which they are originally assigned, may transfer to a school that offers the Bilingual Education Program." 412 F. Supp. at 1218.

The totality of the tools selected anticipated *Milliken v. Bradley II*, 433 U.S. 267 (1977) and evidenced the far-sighted approach taken by the district court. Furthermore, they suggest that it is questionable as to whether any tri-ethnic school district can fully realize its desegregative goal by student assignment alone. Creativity is a necessary aspect.¹⁷

SUMMARY OF ARGUMENT

1. What occurred in the district court is precisely what ought to occur. A district judge appraised himself of all the available facts, considered and combined the options, recognized the necessity of some compromise among positions, selected the options best suited to providing an equal and quality desegregated educational opportunity to each child in the system, and adopted a plan that promises to work both immediately and in the future. The promise of success is a

¹⁷ A very similar conclusion was reached by Plaintiffs' expert witness, Dr. Charles V. Willie of Harvard. Dr. Willie was one of the masters appointed by Judge Garrity in *Morgan v. Hennigan*, 379 F. Supp. 410 (D. Mass. 1974), *aff'd sub nom. Morgan v. Kerrigan*, 509 F. 2d 580 (CA 1 1974) *cert. denied*, 421 U.S. 963 (1975), the Boston case. He concludes an article about the largely rejected plan he drafted by noting that it proposed "a new approach to school desegregation which attempted to unite method and purpose. Some of our proposals were rejected in favor of advancing racial quotas, method without its purposes. . . . How to prevent separation of method from purpose in education is a problem in need of serious study. 'An editorial in the *New York Times* summed up the issue quite nicely: Integration must be made synonymous with better education' (May 20, 1975)." Willie, *Racial Balance or Quality Education?* 84 School Rev. 313, 325 (1976).

key component. Success comes from quality and is sustained by support. Judge Taylor knew of Boston and Louisville. He knew that a court order without support in the community is an exercise of will, not of discretion. He charged the community to come forward and make the plan work. The community responded accordingly. To hold, as the Court of Appeals did, that more had to be done, crossed the limits of appellate review of district court discretion.¹⁸ *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 409 (1977).

2. Since this can and should be decided on the narrow issue of the informed discretion of the district judge, no other issues need be reached. But should the issue tendered by the Curry Intervenors be faced, their position should be rejected. Transmuting school suits into battles that tax social science methodologies beyond their limits holds promise for neither schools nor courts — nor this Nation.

ARGUMENT

I. The District Judge Appropriately Exercised The Broad Discretion Necessary To Implement A Successful Desegregation Plan.

¹⁸ In spite of Fifth Circuit's ruling, it acknowledged the comprehensive approach by the district judge: "After developing a voluminous record and holding hearings for over a month on the feasibility and effectiveness of these proposals, the district judge drew a comprehensive plan dealing, *inter alia*, with special programs, transportation, discipline, facilities, personnel, and an accountability system, as well as student assignments." 572 F. 2d 1010, 1013 (CA 5 1978).

The Civil Rights Commission in its 1976 report *Fulfilling the Letter and Spirit of the Law* spent considerable detail to remind us of the received knowledge after two decades of school desegregation: successful desegregation happens not by chance but through planning and total community commitment. *Id.* at 168-201. "Only in learning together as equals, sharing knowledge and experiences, can children hope to develop the cultural values which will prepare them to be fully contributing members of society." *Id.* at 206. The report reflects well the breadth of school desegregation in attempting to provide the promise of *Brown v. Board of Education*, 347 U.S. 494 (1954): equal educational opportunities for all.¹⁹

The path to the promise is not perfectly marked and cryptic statements in *Brown II*, *Swann* and *Green* tell the

¹⁹ We do not read *Brown I* as purely a race case. First, it is not so written; indeed it is written as an education case. Second, if it were solely a race case, the remedy would have been significantly easier to achieve and none of the language of *Brown II* and *Swann* would have been necessary. Third, as a race case it places incredible strains on credulity to assume that Southern schools, but for segregation would have been integrated, while the Northern schools would not. *Milliken v. Bradley I*, 418 U.S. 717 (1974). Finally, while treating *Brown* as a race case has the advantage of simplicity of remedy — bus to balance — it carries the corresponding difficulty of ignoring the mission of any school system: to provide a quality education to each child. If the mission is recognized, the availability of a richness of remedial actions in a school desegregation context becomes apparent. *Milliken v. Bradley II*, 433 U.S. 267 (1977). See generally, Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1976). See also Willie, *Racial Balance or Quality Education?*, 84 School Rev. 313 (1976): "The fact that this desegregation decision was intended to foster education seems to have been forgotten."

district judge upon default by a school board a broad discretion is his. To exercise his discretion he must first learn, then act, and finally evaluate (somewhat later) the success of his product. Few other discretionary decisions probe so deeply into the resources of a judge or approach even a fraction of the difficulty. And, as we have noted, the geography and population shifts in Dallas made Judge Taylor's job unenviable in its complexity.

Although a native Dallasite, the judge had to study the district to learn, *inter alia*, where the people lived, where they would live in five years, what the ages of their children were, where the schools were located, as well as the conditions, complexions and capacities of the schools. Then a solid month of trial provided Judge Taylor with a wealth of plans and information. Naturally, none of the plans submitted was perfect. But some were remarkably better than others. The judge had already recognized, as he had stated in court, that the DISD plan was "patently unconstitutional." The responsibility for securing a constitutionally acceptable plan was now squarely his. When school authorities default "a district court has broad power to fashion a remedy that will assure a unitary school system." *Swann*, 402 U.S. at 16.

Of the remaining plans, one other was especially troublesome. The quota-like approach of the NAACP with its demand to change student assignments as neighborhoods change not only ran against *Swann's*

presaging of the holding in *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976), but the NAACP in its commitment to provide a racially balanced system for Blacks was willing to leave the Mexican American children in a secondary position (at least temporarily).²⁰ Such a conclusion is also "patently unconstitutional" and it is unthinkable that a district judge would accept it. Of necessity the focus on the plan to be ordered narrowed to those plans which were constitutional and which promised to work. The plan finally implemented reflected the predominant thinking of the parties to the litigation. Where commonalities of approach were present, they were implemented.²¹ The process was the essence of informed discretion: the application of reasoned judgment to the facts at hand.

It is true that the plan selected, essentially the plan drafted and submitted by the Education Task Force of the Dallas Alliance, is a compromise. It is easy to deride compromise. Furthermore, sloganeering that constitutional rights cannot be compromised is as irresistible as it is irrefutable. Unfortunately, it begs the real question. The answer, of course, is that each

²⁰ "The first magnitude of desegregation and the attaining of an Unitary School System should be to achieve a racial balance of black and white students in each school and then follow through with the integration of other minorities into the system." (Emphasis added).

²¹ The commonalities available demonstrate a substantial improvement over the situation at the beginning of this decade where the lack of alternatives from either counsel for the plaintiffs and the school boards virtually mandated racial balance remedies "because there is not much else that a court can do that will have an impact." Bickel, *Education in a Democracy: The Legal and Practical Problems of School Busing*, 3 Human Rights 53, 59-60 (1973).

child must be granted equal educational opportunities and there is a duty on the school board (or, that failing, the district judge) to establish a unitary school system. But these in turn are only starting points. Despite a decade of urban litigation involving cities as diverse as Charlotte, Mobile, Denver, Detroit, Pasadena, and Dayton, major questions — questions that no district judge can avoid — are unanswered (and sometimes unasked). *Swann* assumed that some one-race schools were allowable. But how many? For what size school district? What parameters ought a judge employ in evaluating the one-race school question in a majority minority district? Is there a maximum beyond which a district may not go regardless of the strength of the proffered justification? If neighborhood schools are acceptable for the very young, what grades are encompassed? At what point does the amount of time a student spends on a bus each day become unreasonable? As a district judge fashions his remedy to include not only student assignments, but also quality educational programs and faculty hiring policies that assist desegregation, what are the priorities among them?²² Is there any room for community involvement beyond that which the adverse parties bring to the litigation?

²² Consider Dr. Kenneth Clark's analysis: Given the fact that public schools, so far, reflect the racial populations of the cities, the goal of attaining high quality education through the democratic process of realistic and administratively feasible forms of desegregation appears to be, at least temporarily, abandoned and is being replaced by the need to concentrate on raising the quality of education without regard to the present racial composition of a city's public schools. This educational imperative must be met, for the present generation of students in the public

Parties, obviously, have pat answers to these and other questions. That is the nature of litigation. For judges, however, the best that is possible is an educated guess as to what the ultimate answers to these questions will be, assuming that in fact answers will be forthcoming. What a district judge faces, then, is an explicit directive — establish a unitary school system — large parameters of which are vague.²³ It is hardly surprising that the lack of explicit rules, the vagueness of doctrine despite numerous decisions involving urban systems, becomes translated into the terminology of informed discretion. For the district judge that delicate balance of private and public needs pin-pointed by *Brown II* must mean compromise. Not compromise in a pejorative sense, but compromise in its best sense. For compromise fits well with no theories and often defies logic; its sole virtue is that in the real world it works.²⁴

schools of our cities is not expendable. If we continue to frustrate these students educationally, they will be, in fact, the ingredients of the "social dynamite" which threatens the stability of our cities, our economy, and the democratic form of government. It is conceivable, also, that a present emphasis on raising the quality of education for these children will eventually facilitate rather than block the continued struggle for a non-racial organization of the public schools in the United States.

K. Clark, *A Possible Reality: A Design for the Attainment of High Academic Achievement for Inner City Students* 51 (1972) (Emphasis added).

²³ See generally, Yudof, *School Desegregation: Legal Realism, Reasoned Elaboration, and Social Science Research in the Supreme Court*, 42 Law and Contemp. Probs. — (Spring 1978) (forthcoming).

²⁴ "Legal theory is one thing. But the practicalities are different." *Ashbacker Radio Co. v. F.C.C.*, 326 U.S. 327, 332 (1945).

While the plan adopted is largely the consensus plan of the Dallas Alliance and thus to that extent reflects compromise among private citizens, Amicus believes that it is unreasonable to expect district judges to be limited to the entire plan of one of the participants.²⁵ A judge must pick and choose among features of the various plans before the court, trying to get the best mix of concepts and programs. It is his duty — not that of any of the parties (except the school board) — to fashion a plan that promises to work. In the exercise of this duty a district judge will encourage, as he will in all litigation, compromises among the parties. Indeed the very vagueness of the law and flux of urban America invite compromise. It is not a dirty word; it is a legal and practical necessity. And it is what Judge Taylor did. He took common parts from all of the plans. He reached for consensus. He gave more to one side in some places, less in others. Desegregation plans are not made in heaven. They are drafted by individuals with sharply competing (and sometimes divided) interests. Putting together a compromise whole is not an abuse of discretion.

Choosing the amount of busing to achieve a desegregated system has always been the most difficult task for the lower courts. Their familiarities with the

²⁵ See also, Hain, *Sealing off the City: School Desegregation in Detroit*, in H. Kalodner & J. Fishman eds., *The Limits of Justice* 223, 274 (1978): "The NAACP and the board of education submitted drastically different plans. Both parties seemed to take extreme positions on the assumption the court would strike a compromise between them."

"practicalities of the situation," *Davis v. Board of School Commissioners of Mobile County*, 402 U.S. 33, 37 (1971), whether it be knowledge of traffic patterns, natural boundaries, or the demographics of the district, place them in the best position to exercise informed choice. It probably would not have been an abuse of discretion to have ordered the busing necessary to implement Plaintiffs' Plan A, but the concept of discretion mandates the choice not to adopt it also.²⁶ It is true that there were no extensive time-distance studies entered into the record — and those offered were conducted on *Sundays*. But any knowledge of Dallas leads one quickly to the realization that once the naturally integrated areas were preserved there would indeed be lengthy bus rides necessary to eliminate many of the one-race schools. Judge Taylor chose not to do this. The goal of desegregation is not merely to rearrange the student assignments in a system.²⁷ It is rather to adopt a plan that will realistically overcome the effects of past discrimination. It is to integrate minds as well as buildings. Thus Judge Taylor wisely anticipated *Milliken v.*

26 Plaintiffs' Plan A would have transported 69,000 students and its projected cost of implementation was \$22,000,000. 412 F. Supp. at 1200.

27 Although many people believe to the contrary. E.g., the letter from John W. Roberts of the Massachusetts Civil Liberties Union stating Judge Garrity's task is "to evaluate plans as they are placed before him not on the basis of the educational quality of the plan, but rather on the basis of whether or not they meet the standards for school desegregation developed by the Federal Courts." Quoted in Willie, *Racial Balance or Quality Education?*, 84 School Rev. 313 (1976).

Bradley II, 433 U.S. 267 (1977) and opted to enrich the educational experiences of the students in a desegregation context.²⁸ This was not only present in the Early Childhood Education concept adopted for K-3 and the magnet approach to grades 9-12,²⁹ but beyond this the district judge crafted an order looking to the other facets necessary to make a desegregation plan work.

DISD was placed under an obligation to recruit quickly additional Black and Mexican American teachers, principals, and other certificated personnel. Yet simply having teachers, principals and administrators ready to occupy buildings is not enough. Clearly the district judge recognized the disparate im-

28 Each of the Black members of the Education Task Force of the Dallas Alliance agrees with the statement of Dr. Benjamin Mays: "Black people must not resign themselves to the pessimistic view that a non-integrated school cannot provide Black children with an excellent educational setting. Instead, Black people, while working to implement *Brown*, should recognize that integration alone does not provide a quality education and that much of the substance of quality education can be provided to Black children in the interim." Mays, *Comment: Atlanta—Living with Brown Twenty Years Later*, 3 Black L.J. 184, 191-92 (1974).

29 We admit magnet schools have not always worked — although with an example like Skyline it is hardly surprising the participants at the district court thought magnets an attractive idea. The use of magnets is not simply freedom of choice by another name. While it is true a student must choose to attend a magnet, that choice may — and should — be heavily influenced by the school districts. Magnet schools, after all, are intended to be significantly superior to other high schools and this can be assisted by a district's phasing out competing courses at non-magnet schools. Should the magnet concept be found ineffective the retention of jurisdiction by the district judge allows for correction. E.g., high school attendance zones might be modified to achieve additional racial mixing.

plications of exposing innocent minority children to possible instructional and administrative biases that sometime fail to vanish in spite of a court order. For the experience to be effective, they must understand and be capable of functioning in their multi-cultural setting. Thus the district judge required in-depth training of these personnel to implement the plan and improve attitudes and awareness to facilitate the effectiveness of the personnel in a desegregated setting.

Finally, the judge sought methodologies of accountability. He accomplished this in two separate fashions. First, the very top administrators in the system were to reflect the racial composition of the city. This would mandate increased hiring of Blacks and Mexican Americans in the hopes that the commitment at the top to make desegregation work now would be reflected in commitment below. Second, the order provides not only for an internal audit by DISD to be filed with the Court, but, more significantly, an external audit of the progress the system is making in adopting the plan of the district court.

If there were nothing more than the district judge's understanding of the district and his reasoned actions in light of the available options and his anticipation of the authority *Milliken II* would give, the plan adopted could be sustained as an appropriate exercise of discretion so long as it held the promise to work. But a realization of what it means to adopt a desegregation plan for a complex urban community places an even heavier than normal burden on a district judge to assess

workability not only *now*, as *Green* demands, but five years or more from now. It is inconceivable that urban systems could be put through all the effort of creating desegregation plans satisfactory to a federal judiciary only to learn that if all the schools go one-race shortly thereafter from extraneous causes, or from the very existence of the plan that promises to work only now, there is no further Fourteenth Amendment obligation. No plan has value that cannot continue to work. And for a plan to continue to work there must be community support as the Civil Rights Commission has recognized. *Fulfilling the Letter and Spirit of the Law* (1976). Judge Taylor knew this and he achieved that support. One can search for various measures of the strength of community support but the passage by the voters of the \$80,000,000 bond issue to assist implementation of the court order is strong evidence that Judge Taylor's prescient charge to the community to come forward and be involved worked — and promises to continue to work. The Dallas community, business, church, civic organizations, as well as private citizens, has demonstrated support for the plan by providing resources a court is unable to order. Within six months of the court order 144 schools had been adopted by either business or civic organizations as focal points for the community effort in channeling volunteers, equipment, private monies to the schools, as well as providing part-time and full-time job opportunities for students.

The successful efforts to include the community and gain a broad base of support for the plan at present and maintain it in the future say much for the district judge.

He did not, unfortunately satisfy everyone. Maybe such a goal is impossible. Legal responsibilities cannot, of course, be shifted. The responsibility for a unitary school system rests with appropriate elected officials and, in default of their duties, with a federal judge. But the judge cannot blind himself to what all others can see and no one argues that school desegregation cases where the community is in an uproar are a model for either the political or judicial process. Schools must be integrated. Minds must be reached. Quality and caring must be assured. It must not only begin, it must also continue. Maybe better plans could have been devised but the plan adopted by Judge Taylor carried the promise to work.³⁰ The informed discretion of the district judge can require no more.

II. *Washington V. Davis* And Its Progeny Have No Place In Southern School Desegregation Cases.

Not only is the *Washington v. Davis*, 426 U.S. 229 (1976) issue not necessary to a decision by this Court (and not considered by the Court below), such a holding is not in the best interests of Dallas or the United States. School suits should not extend for the rest of this century whether the goal is to integrate or to avoid integration. Decisional principles should en-

³⁰ Naturally the district judge retained jurisdiction over the DISD litigation. Should the plans and concepts he approved be shown not to work in practice, he is free to modify or abandon them as experiences dictate.

courage reasonable compromise, not further litigation. This applies to whether one-race schools cause challenges as to the existence of a unitary system or are justified as the normal outcome of urban housing patterns having nothing at all to do with actions of school boards.

Suddenly to reverse school desegregation cases into endless — and fruitless — squabbling over whether school segregation caused housing segregation or vice versa does more than tax the limits of judicial competence and social science methodologies. Fundamentally, it encourages the false hope that school systems may be released from the obligations to eradicate past de jure segregation. The fruits of a quarter-century of footdragging by school districts ought not be a return to separate and unequal. Yet the *Washington v. Davis* rationale promises little else. That is why it has been so enthusiastically embraced by those who resisted *Brown II*, *Green*, and *Swann*. Providing for equal and quality educational opportunities for each child in a school district — the goal of the Dallas Alliance Plan — can be made vastly more difficult when judicial as well as political pressures offer the hope that compromise is unnecessary — that the future belongs to those who questioned *Brown*.

The South has made great progress in the last 15 years. Indeed today Boston is clearly a Northern phenomena, one that unfortunately may plague this great Nation for years. The North perceives no obligations in this area and the North resists. District

courts daily remind the South of its obligations. The spur has worked to set Southern school cases against a backdrop of high commitment to educational quality even during a period of fiscal retrenchment elsewhere. This is hardly a position mandating a call, no matter how uncertain, for retreat. Leaving these cases in the community, in the school boards, in the local district courts, where a judge may be guided by the equitable principles of *Brown II* and *Swann* and the desire to bring to each child the promise of the best education, is the appropriate solution.

CONCLUSION

For the reasons stated above the Court should reverse the judgment of the Court of Appeals remanding this case to the district court for continued implementation of the ordered plan.

DATED May ____, 1979.

Respectfully submitted,

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PROOF OF SERVICE

I, H. Ron White, an attorney for the Amicus Curiae herein, hereby certify that on the ____ day of May, 1979, I served three copies of the foregoing Motion for Leave to File Brief Amicus Curiae and Brief of Amicus Curiae to the Supreme Court upon the following Counsel for the Petitioners, Counsel for the Respondents and the Respondent Pro Se:

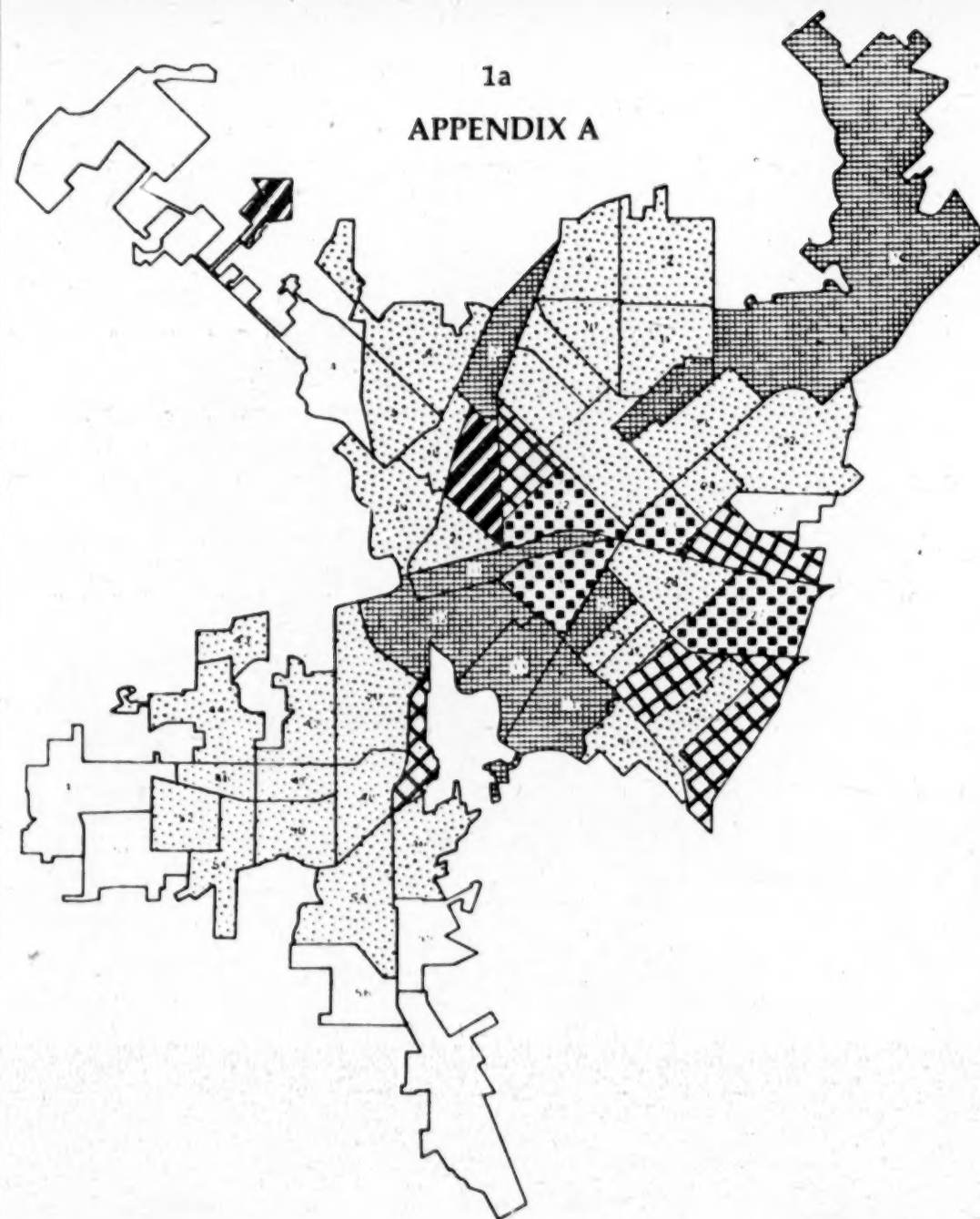
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by mailing same to such Counsel and Respondent pro se at their respective addresses and depositing the same in a United States mail box in an envelope properly addressed to such addresses with first class postage prepaid.

I further certify that all parties required to be served have been served.

H. RON WHITE
Attorney for Amicus Curiae
Dallas Alliance and
Education Task Force of
Dallas Alliance

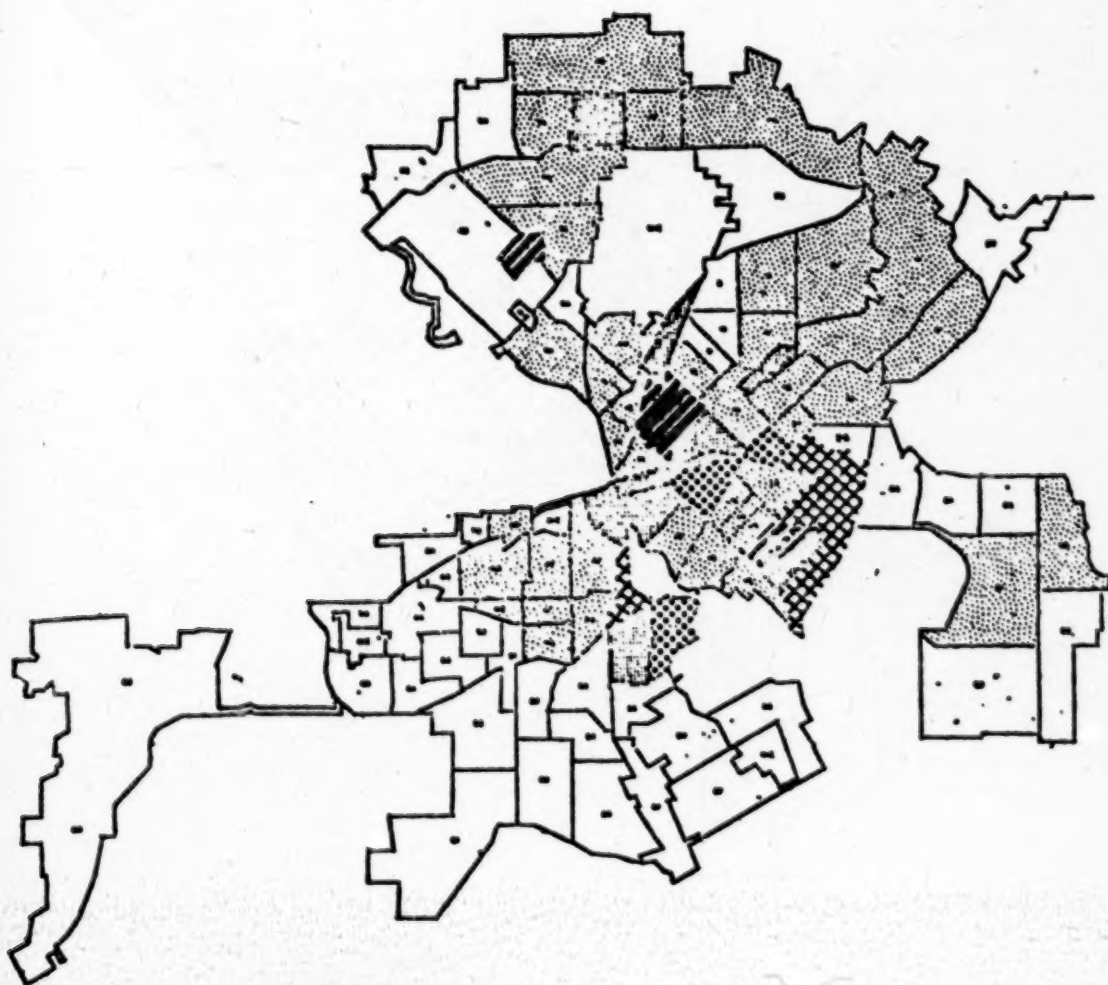


1940.

COMMUNITY ANALYSIS PROGRAM - CITY OF DALLAS
BLACK POPULATION BY CENSUS TRACT


DEPARTMENT OF PLANNING
AND URBAN DEVELOPMENT
PUB. NO. T45X
PLATE B-1

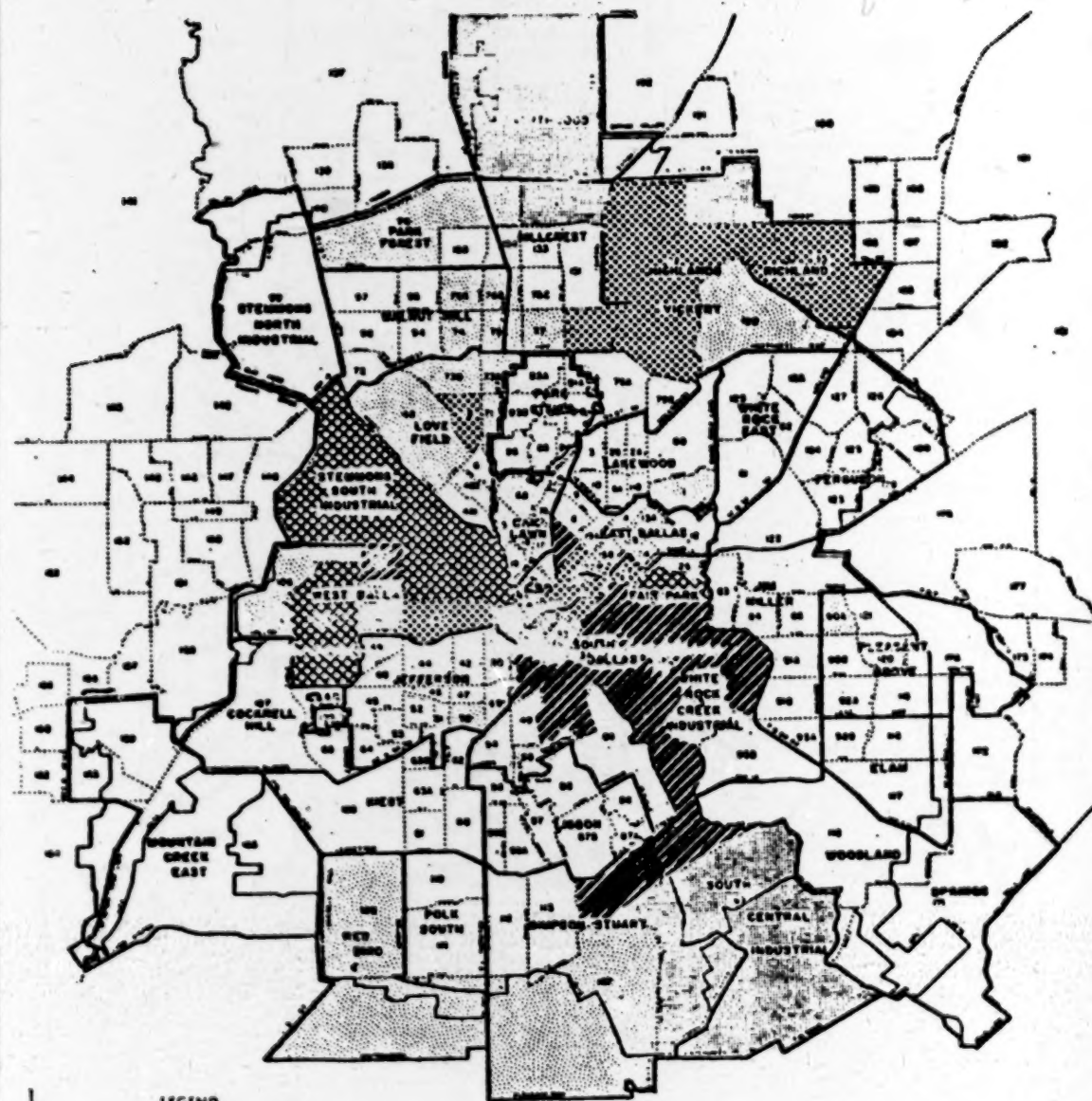
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U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS
PUB. NO. 1434
PLATE B-3

COMMUNITY ANALYSIS PROGRAM - CITY OF DALLAS
BLACK POPULATION BY CENSUS TRACT - 1950

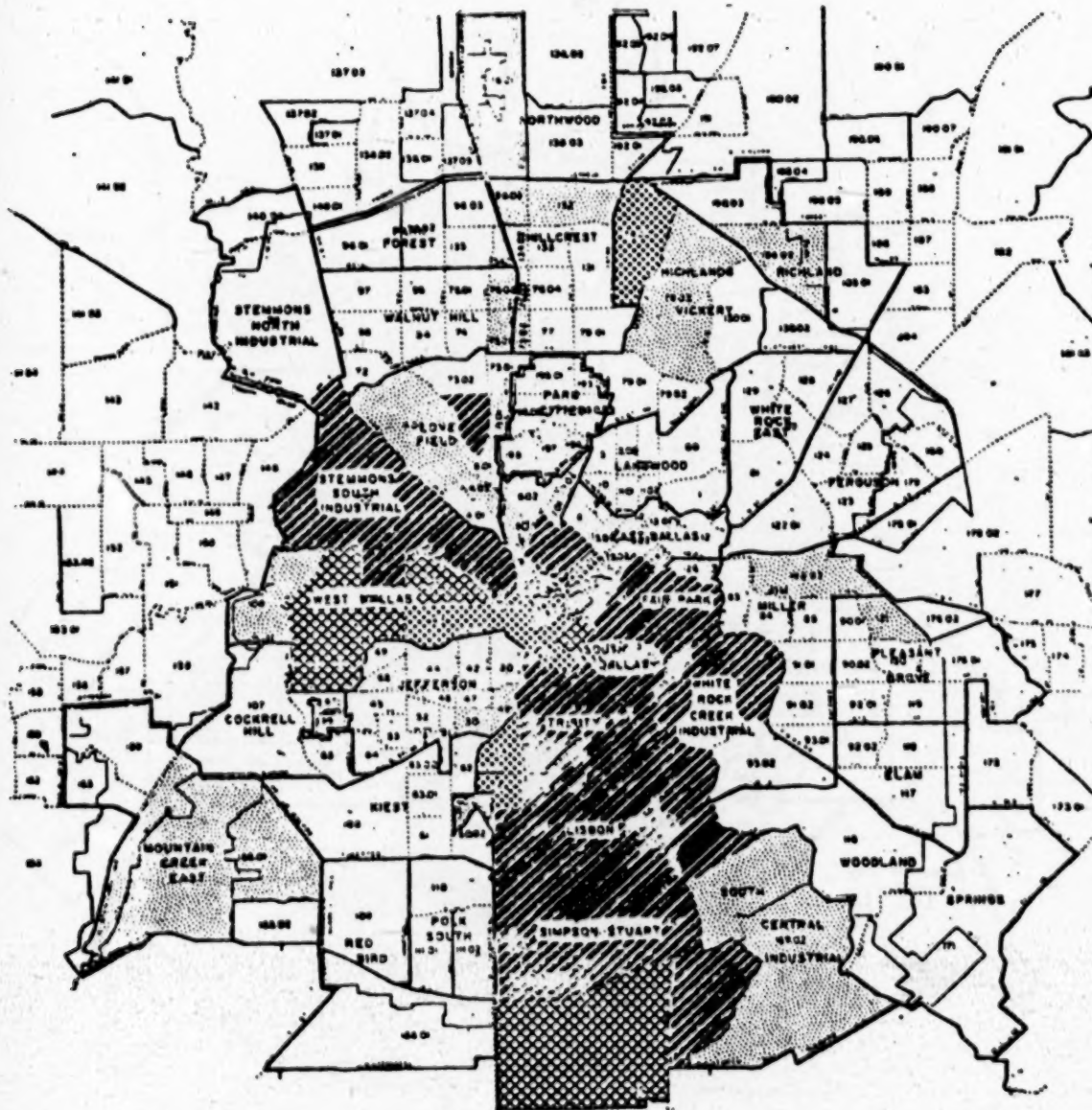
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U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS
PUB. NO. 1434
PLATE B-3

COMMUNITY ANALYSIS PROGRAM - CITY OF DALLAS
BLACK POPULATION BY CENSUS TRACT - 1960

4a



LEGEND
PERCENT BLACK POPULATION

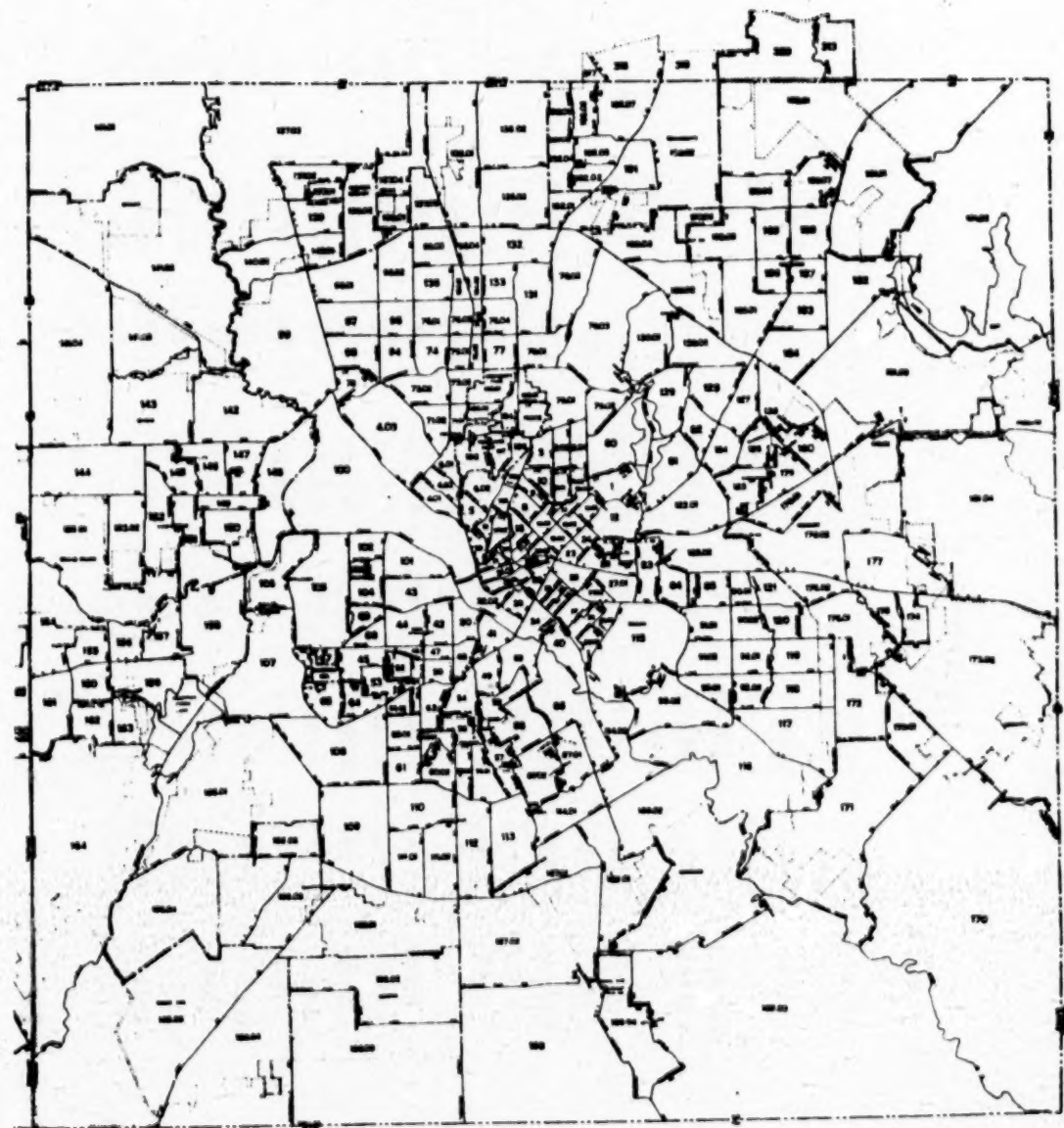


COMMUNITY ANALYSIS PROGRAM - CITY OF DALLAS
LACK POPULATION BY CENSUS TRACT - 1970

PUB. NO. 1432
PLATE B-4

5a

CENSUS TRACTS IN THE DALLAS, TEX. SMSA
INSET A - DALLAS AND VICINITY



1970 Census of Population and Housing
CENSUS TRACTS
DALLAS, TEX.
BY DISTRICT OF TERRITORY AND STATISTICAL AREA
PLATE B-4

207 2

APPENDIX B POPULATION BY RACE BY CENSUS TRACT: 1940, 1950, 1960 AND 1970

CENSUS TRACT	1940				1950				1960				1970			
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
001	2,587	296	4,445	153	3,549	43	3,772	8	3,549	43	3,772	8	3,549	43	3,772	8
002.01	3,685	60	7,093	57	3,462	3	3,120	0	3,462	3	3,120	0	3,462	3	3,120	0
002.02					4,271	12	3,877	0	4,271	12	3,877	0	4,271	12	3,877	0
003	3,758	60	4,327	14	3,935	7	3,566	12	3,935	7	3,566	12	3,935	7	3,566	12
004.01	8,198	22	7,495	77	2,789	2	2,817	0	2,789	2	2,817	0	2,789	2	2,817	0
004.02			9,695	35	4,249	6	5,469	121	4,249	6	5,469	121	4,249	6	5,469	121
004.03					7,342	760	6,192	129	7,342	760	6,192	129	7,342	760	6,192	129
005	4,255	83	3,831	27	3,315	53	4,497	58	3,315	53	4,497	58	3,315	53	4,497	58
006.01	9,089	535	3,382	3	4,674	7	5,653	11	4,674	7	5,653	11	4,674	7	5,653	11
006.02			8,344	205	7,201	124	7,790	49	7,201	124	7,790	49	7,201	124	7,790	49
007.01	5,716	694	4,911	1,363	3,704	5	3,297	8	3,704	5	3,297	8	3,704	5	3,297	8
007.02					2,142	422	2,586	96	2,142	422	2,586	96	2,142	422	2,586	96
008	3,847	89	4,772	69	4,605	6	4,634	19	4,605	6	4,634	19	4,605	6	4,634	19
009	3,329	87	3,275	42	2,833	12	3,074	4	2,833	12	3,074	4	2,833	12	3,074	4
010	5,785	99	5,284	44	4,479	19	4,681	14	4,479	19	4,681	14	4,479	19	4,681	14
011.01	7,955	173	8,166	77	4,234	21	4,050	5	4,234	21	4,050	5	4,234	21	4,050	5
011.02					2,488	12	2,388	1	2,488	12	2,388	1	2,488	12	2,388	1
012	5,875	118	5,667	59	5,126	3	4,697	10	5,126	3	4,697	10	5,126	3	4,697	10
013.01	7,645	383	8,515	214	3,423	11	1,881	1	3,423	11	1,881	1	3,423	11	1,881	1
013.02					4,687	47	4,928	19	4,687	47	4,928	19	4,687	47	4,928	19
014	2,259	385	2,357	264	3,177	83	3,716	26	3,177	83	3,716	26	3,177	83	3,716	26
015.01	11,104	596	11,164	356	6,323	62	6,407	5	6,323	62	6,407	5	6,323	62	6,407	5
015.02					4,665	78	3,702	42	4,665	78	3,702	42	4,665	78	3,702	42

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CENSUS TRACT	1940				1950				1960				1970			
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
016	2,774	6,039	2,070	7,352	1,114	7,086	425	5,559	1,114	7,086	425	5,559	1,114	7,086	425	5,559
017.01	2,281	9,741	1,171	7,802	548	5,823	42	269	548	5,823	42	269	548	5,823	42	269
017.02							322	2,758			322	2,758			322	2,758
018	3,859	166	3,933	50	2,720	10	2,578	17	2,720	10	2,578	17	2,720	10	2,578	17
019	5,377	206	4,397	73	2,305	21	1,390	28	2,305	21	1,390	28	2,305	21	1,390	28
020	5,145	228	5,335	175	5,093	84	6,005	44	5,093	84	6,005	44	5,093	84	6,005	44
021	2,727	187	1,235	86	545	37	153	29	545	37	153	29	545	37	153	29
022.01	6,200	2,098	6,195	1,648	1,702	620	1,233	418	1,702	620	1,233	418	1,702	620	1,233	418
022.02					2,415	340	1,856	342	2,415	340	1,856	342	2,415	340	1,856	342
023	3,727	1,319	3,364	1,168	2,106	1,373	591	1,939	2,106	1,373	591	1,939	2,106	1,373	591	1,939
024	4,239	87	3,774	96	2,722	86	2,069	341	2,722	86	2,069	341	2,722	86	2,069	341
025	2,045	2,501	2,159	2,714	1,790	3,688	460	4,249	1,790	3,688	460	4,249	1,790	3,688	460	4,249
026	2,595	2	2,929	2	2,156	1	1,665	119	2,156	1	1,665	119	2,156	1	1,665	119
027.01	4,419	2,925	4,647	4,770	32	7,245	13	7,247	32	7,245	13	7,247	32	7,245	13	7,247
027.02					105	4,869	23	4,890	105	4,869	23	4,890	105	4,869	23	4,890
028	4,701	147	4,249	112	965	2,928	75	2,445	965	2,928	75	2,445	965	2,928	75	2,445
029	2,154	266	1,793	167	214	1,685	89	3,687	214	1,685	89	3,687	214	1,685	89	3,687
030	4,095	3,655	3,264	2,602	1,688	1,185	468	151	1,688	1,185	468	151	1,688	1,185	468	151
031.01	2,106	410	2,011	357	979	411	1,457	981	979	411	1,457	981	979	411	1,457	981
031.02					56	40	53	1	56	40	53	1	56	40	53	1
032.01	3,626	395	2,868	391	1,269	192	342	15	1,269	192	342	15	1,269	192	342	15
032.02							133	73			133	73			133	73

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CENSUS TRACT	1940				1950				1960				1970			
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
033	4,963	680	4,585	451	2,768	519	821	977								
034	5,151	656	5,183	442	543	5,559	81	6,852								
035	2,404	227	2,397	186	150	2,372	31	3,234								
036	3,262	111	2,722	286	73	3,041	8	1,825								
037	2,121	5,321	648	6,840	62	6,880	31	5,817								
038	3,912	73	3,734	695	49	5,559	11	4,858								
039.01					121	4,548	49	4,525								
039.02	2,933	3,668	2,091	5,553	10	4,642	5	3,742								
040	4,137	67	4,142	68	205	4,418	122	3,662								
041	2,043	3,302	1,861	3,078	418	4,265	135	3,438								
042	4,354	122	5,377	133	4,817	24	4,489	22								
043	1,268	45	1,575	40	2,962	1,877	2,437	1,280								
044	4,856	115	5,639	87	5,690	25	6,386	9								
045	2,950	13	7,676	12	6,719	5	7,172	3								
046	2,868	67	2,835	36	2,654	14	2,753	10								
047	4,670	84	4,197	41	3,074	8	2,973	4								
048	4,779	79	4,336	36	3,369	196	3,433	193								
049	3,330	37	4,311	922	4,640	1,500	518	7,006								
050	5,258	100	4,834	85	3,984	52	2,871	56								
051	4,066	18	4,515	8	4,025	4	3,584	0								
052	5,260	44	4,981	22	4,293	10	3,771	2								
053	5,446	2	6,701	3	5,946	0	5,344	1								
054	5,120	24	6,369	1	5,962	5	4,287	2,620								

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CENSUS TRACT	1940				1950				1960				1970			
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
055	3,070	3	4,070	0	4,284	34	562	3,443								
056	4,586	2	5,580	0	4,970	1	3,497	1,539								
057	4,306	1	6,101	3	6,366	0	1,813	5,524								
058	6	1,495	57	3,539												
059.01			4,300	1	7,008	1	930	7,304								
059.02					3,378	3	601	3,717								
060.01			1,396	1	4,643	0	3,925	648								
060.02							2,506	0								
061			149	0	1,185	0	4,751	7								
062			2,567	1	4,298	4	4,532	25								
063.01			4,628	1	5,210	0	4,527	0								
063.02					2,463	1	2,211	1								
064			4,398	7	5,762	0	5,892	2								
065			4,519	0	6,253	0	6,257	0								
066			89	0												
067			2,651	4	2,509	0	3,123	3								
068			3,582	0	2,343	1	4,384	59								
069			5,817	4	590	2	1,913	4								
070			2,738	0												
071.01			7,285	60	2,613	29	2,178	138								
071.02					4,432	2,371	1,763	5,861								
072			3,649	13	3,703	3	4,635	6								
073.01			6,755	110	2,859	16	2,452	2								

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CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
073.02					4,001	46	4,009	18
074			716	56	1,660	49	1,676	12
075.01			990	132	1,224	89	720	14
075.02							461	6
076.01			2,534	72	1,728	20	2,285	3
076.02					1,286	45	803	9
076.03					4,084	13	838	3
076.04							3,670	4
077			2,679	60	5,743	39	5,733	33
078.01			1,518	23	4,230	3,019	893	1
078.02							3,448	3,171
078.03							6,970	81
079.01			1,738	6	2,189	3	7,712	16
079.02					5,629	1	5,851	5
080			2,940	69	5,456	23	5,885	5
081			4,298	23	5,926	18	6,917	8
082			2,270	8	3,343	1	5,029	0
083			1,286	2	2,037	6	1,623	2
084			6,241	0	6,863	6	6,225	4
085			2,541	1	3,538	1	3,274	0
086			2,318	3	4,318	3	925	3,155
087.01			5,979	18	1,916	5	362	4,606
087.02					9,491	1	1,099	12,334

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CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
088			4,691	1	9,138	15	407	11,829
089			2,769	1,004	1,590	18	676	7,272
090.01			2,248	36	999	1	1,177	7
090.02					2,540	0	4,221	1
091.01			447	34	6,322	0	5,378	0
091.02					8,274	0	8,782	1
092.01			4,172	12	4,601	1	5,406	2
092.02					4,535	0	4,710	0
093.01			5,112	33	3,891	2	3,648	2
093.02					4,247	0	7,310	57
094			525	2	7,966	2	6,969	6
095					2,412	9	2,485	0
096.01					6,954	64	12,011	90
096.02							8,657	3
096.03							4,746	0
096.04							2,059	137
097					5,766	2	8,669	7
098			4,788	3	4,788	3	9,157	8
099			4,621	0	4,621	0	3,185	2
100			1,170	3,289	1,170	3,289	861	2,764
101			4,200	7,702	4,200	7,702	3,567	7,569
102			315	7,417	315	7,417	329	6,171
103			5,062	2	5,062	2	299	4,448

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CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
104					2,167	351	902	1,568
105					1,527	3,329	1,119	2,720
106					5,695	172	5,497	282
107					3,664	0	6,390	24
108					4,892	1	14,901	12
109					386	8	1,312	6
110					3,907	0	10,138	1
111.01					047	13	1,914	7
111.02							11,584	19
112					2,688	2	846	2,696
113					1,376	1	174	4,643
114.01					402	0	133	4,369
114.02							134	1,605
115					168	6,302	42	6,729
116					5,113	0	7,484	19
117					4,192	3	5,841	4
118					2,174	0	2,686	0
119					1,110	0	2,454	0
120					1,281	0	2,526	0
121					275	0	227	15
122.01					3,490	4	12,168	2
122.02							4,066	175
123					4,916	2	6,994	9

13a

CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
124					6,381	11	6,820	4
125					9,515	1	8,830	0
126					2,228	0	4,010	0
127					8,811	0	8,325	2
128					6,534	3	9,183	7
129					5,371	1	5,293	0
130.01					7,657	100	13,746	70
130.02							9,680	15
131					2,646	6	7,725	9
132					1,614	255	2,128	80
133					2,341	9	2,049	2
134.01					1,767	5	1,146	8
134.02							1,504	0
135					967	8	2,885	8
136.01					1,770	312	1,112	247
136.02							7,600	2
136.03							11,191	20
137.03							0	0
138.01							0	0
140.01					66	0	0	0
140.02							47	0
141.01							0	0
141.02							37	0

14a

CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
148							0	0
158					0	0	0	0
159			37	0	37	0	42	0
163			0	0	0	0	23	0
164			0	0	0	0	0	0
165.01			562	0	562	0	1,627	21
165.02							0	0
165.03							86	1
165.04							0	0
166.01			1,477	10	1,477	10	1,638	0
167.01			2,068	24	2,068	24	146	3,085
167.02							341	395
169.01			547	90	547	90	155	2,851
169.02							113	6
171			135	0	135	0	164	0
176.01							156	0
178.01							0	0
178.02			209	0	209	0	0	0
179			166	0	166	0	205	0
180							101	0
181.03							0	0
184			0	0	0	0	0	0

15a

CENSUS TRACT	1940		1950		1960		1970	
	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
185.01					68	48	19	0
185.02							66	2
190.01					112	14	0	8
190.02							0	0
190.03							453	2
192.01					169	0	4,697	5

Source: 1940, 1950, 1960 and 1970 Census of Population, U.S. Department of Commerce, Bureau of the Census.

APPENDIX C

THE DALLAS ALLIANCE

CORRESPONDENT ORGANIZATIONS

American G.I. Forum
 American Indian Center of Dallas, Inc.
 American Institute of Architects, Dallas Chapter
 American Jewish Committee, Dallas Chapter
 Amigos
 Bishop College
 B'Nai B'Rith Womens' Council
 Boy's Club of Dallas, Inc.
 Brown Berets
 Camp Fire Council of Metropolitan Dallas
 Catholic Charities
 Catholic Diocese of Dallas
 Church Women United
 Community Council of Greater Dallas
 Community Relations Council, Jewish Federation of
 Greater Dallas
 Council of Catholic Women, Dallas Deanery
 Cumberland Presbyterian Church
 Dallas Alumnae Chapter, Delta Sigma Theta
 Dallas Association for Retarded Citizens
 Dallas Association of Young Lawyers
 Dallas Bar Association
 Dallas Black Chamber of Commerce
 Dallas Chamber of Commerce
 Dallas Citizens Council
 Dallas City Council of PTAs

Dallas Civic Ballet
 Dallas Council on Alcoholism
 Dallas County Adult Probation Department
 Dallas County AFL-CIO
 Dallas County Community Action Committee
 Dallas County Mental Health & Mental Retardation
 Center
 Dallas County Nutrition Program
 Dallas Federation of Women's Clubs
 Dallas Homeowners League
 Dallas Housing Authority
 Dallas Housing Forum
 Dallas Inter-Tribal Center
 Dallas Junior Chamber of Commerce
 Dallas Mexican Chamber of Commerce
 Dallas Opportunities Industrialization Center
 Dallas Police Department
 Dallas Minority Business Center
 Dallas Public Library
 Dallas Symphony Association, Inc.
 Dallas Urban League
 East Dallas Community Design Center
 Family Guidance Center
 Goals for Dallas
 Goodwill Industries of Dallas, Inc.
 Greater Dallas Community of Churches
 Greater Dallas Community Relations Commission
 Greater Dallas Crime Commission
 Greater Dallas Housing Opportunity Center, Inc.
 Greater Dallas Planning Council
 Historic Preservation League of Dallas, Inc.

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Interdenominational Ministerial Alliance
Jobs for Progress, Inc. (Operation SER)
Junior League of Dallas, Inc.
League of United Latin American Citizens (LULAC)
League of Women Voters of Dallas
Links, Inc., of Dallas
Los Barrios Unidas Clinic
Mental Health Association of Dallas County
Mount Olive Volunteer Effort (MOVE)
National Alliance of Businessmen
National Association of Social Workers, Inc.
National Conference of Christians & Jews
National Council of Jewish Women, Greater Dallas
Section
National Organization for Women (NOW)
NAACP — John F. Kennedy Branch
NAACP — Oak Cliff/Cedar Crest Branch
NAACP — South Dallas Branch
Neighborhood Conservation Alliance
Neighborhood Housing Services of Dallas, Inc.
North Park/Love Field Civic League
Rabbinical Association of Dallas
Salesmanship Club of Dallas
Salvation Army
Senior Citizens of Greater Dallas, Inc.
Southern Methodist University
Tejas Girl Scout Council, Inc.
Theater Three
United Methodist Church, Office of the Bishop

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Urban Studies Program, SMU
Venture Advisors, Inc.
Visiting Nurses Association
Voluntary Action Center of Dallas County
Wesley Rankin Community Center
Womens' Council of Dallas County, Inc.
Women for Change Center
YMCA of Dallas Metropolitan Area
YWCA of Metropolitan Dallas

OCT 24 1979

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-282

DONALD E. CURRY, ET AL.,

v.

Petitioners,

DALLAS N.A.A.C.P., ET AL.,

and

NOLAN ESTES, ET AL.,

Respondents.

No. 78-253

NOLAN ESTES, ET AL.,

v.

Petitioners,

DALLAS N.A.A.C.P., ET AL.,

Respondents.

No. 78-283

RALPH F. BRINEGAR, ET AL.,

v.

Petitioners,

DALLAS N.A.A.C.P., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS,
DONALD E. CURRY, ET AL

ROBERT L. BLUMENTHAL

ROBERT H. MOW, JR.

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Donald E. Curry, et al

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In the
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OCTOBER TERM, 1978

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DONALD E. CURRY, ET AL., *Petitioners,*
v.

DALLAS N.A.A.C.P., ET AL.,
and
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v.

DALLAS N.A.A.C.P., ET AL., *Respondents.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**REPLY BRIEF FOR THE PETITIONERS,
DONALD E. CURRY, ET AL**

TO THE HONORABLE COURT:

Since the filing of Curry et al's initial brief, this Court has decided *Columbus Board of Education v. Penick*, 47 Law Week 4924 (July 2, 1979) herein "*Columbus*") and *Dayton Board of Education v. Brinkman*, 47 Law Week 4944 (July 2, 1979) (herein "*Dayton II*"). This Reply Brief is required to respond to that new authority to certain unfair characterizations of Curry' initial brief, and to recent changes in the Dallas Independent School District.

Curry et al, Petitioners, fervently pray that this Court will understand the following about their position. They are not opposed to integrated schools and their position in this Court does not arise out of any such opposition. Indeed, they are here because they favor integrated schools and feel that their position is the only method of ultimately achieving integration in the public schools of the central cities of America, a result which they devoutly desire. Secondly, Curry feels that the very survival of public education in the central cities of the United States and ultimately the very survival of the central cities of the United States is at stake in this proceeding. Lastly, these petitioners wish to point out that although their children are being asked to bear the brunt of whatever remedy is imposed by the United States Courts, neither they nor their children have any nexus to a school board that existed in 1954 from which their children are two school generations removed, nor do they have any nexus to the School Board or the Federal Courts as they existed in 1965 from which their children are a full school generation removed. Even more pointedly, Curry has no nexus at all to the Honorable T. Whitfield Davidson, United States District Judge, who, Plaintiffs-Respondents accurately point out in their brief did the student assignment in DISD until 1965, when the Fifth Circuit adopted

its racially neutral student assignment policy which was being followed until 1971.

Petitioners are as aware as this Court of the long ugly history of school boards trying to retain segregated schools and fighting integration in every conceivable way. Obviously that long history colors the thinking of this Court, as it has colored the thinking of every Court. However, the year is 1979, not 1960, and obviously since 1965 intelligent, well-intentioned United States Courts have attempted to achieve racial balance in the Dallas Independent School District. The results of those attempts for the last 14 years by the United States Courts are before the Court in this proceeding. The latest decision, by the Fifth Circuit, calls for additional action by the District Court.

Turning to the facts in *Columbus* and *Dayton II*, the Dallas Independent School District has had a majority to minority transfer program since 1971. The Dallas Independent School District since the enforcement of a strict racially neutral school zone policy by the Fifth Circuit in 1965 has not had any optional transfers. Children were required to go to the district in which they resided until 1971 with the adoption of the majority to minority transfers approved by the Court. Since 1971 no school could be built in the Dallas Independent School District without the approval of the United States District Court. Complete faculty desegregation of the Dallas Independent School District occurred in 1971 and has remained constantly true since then. The only direct cognitive purposeful act of desegregation by the School District cited by the District Court in this proceeding, upon which all remedies are based, was its failure to adopt some of the remedial programs suggested by the Courts from 1965 to 1971. All of these remedial pro-

grams were voluntarily adopted before trial in the original proceeding in this cause in 1971.

Being aware of all the distinctions set out in the paragraph above which could properly distinguish the Dallas Independent School District, the Dallas Independent School District was pursuant to State law, a segregated school district in 1954. As Plaintiff-Respondent Tasby et al in its brief before this Court points out, from 1956 to 1965 the Honorable T. Whitfield Davidson, United States District Judge, entered a series of conflicting orders ultimately resulting in the stair-step plan which was struck down in 1965 with the implementation of a racially neutral system by the Fifth Circuit.

As we read the most recent teachings of this Court in *Columbus* and *Dayton II*, a school district which was once a State-enforced, segregated district is not entitled to maintain a racially neutral student assignment policy based upon a neighborhood school concept. Petitioner would fervently hope that the distinctions set forth in the preceding paragraph distinguishes *Columbus* from the Dallas Independent School District, and will cause this Court to reverse the Fifth Circuit as set forth in our original brief, based on *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton I*). However, for purposes of this brief the assumption is that *Columbus* stands for the proposition that racially neutral neighborhood schools may no longer be a student assignment policy by school districts in cities which in 1954 were mandatorily segregated by State law, and the Districts and Courts are required to achieve racial balance. It is to this proposition that the remainder of this brief is addressed, in hopes that this Court will recognize its error.

Without questioning the good intentions of the Court in trying to achieve a desirable result, Petitioners would show

from the record in this case, that mandatory student re-assignment and busing do not desegregate, but in fact re-segregate and destroy the ability to achieve an integrated school district. The Dallas Independent School District has been used as a model of community support for a desegregation plan. The following is the result and facts of this District.

In October of 1970, the last October prior to the first busing order, there were 95,012 Anglo students in the Dallas Independent School District. That number of Anglo students had been increasing each year until 1970 when it was down 2% from October of 1969. (Def. Ex. 13) The elementary enrollment, however, was slightly up for Anglo students between 1969 and 1970. (Webster, Vol. VIII, p. 169) As of November 14, 1978, there were 45,141 Anglo students in the Dallas Independent School District, a loss of 49,871 students, or 52.49% of the Anglo students in the DISD at the last census before the court order of busing began. (All numbers for 1978 are from the official reports of the Dallas Independent School District required to be filed with the District Court and by motion added as a supplement to the record.) Since the new wave of busing ordered in the summer of 1976, the District lost an additional 12,285 Anglo students, or 21.39% of the remaining Anglo student body in three short years. Newspaper reports of this year's enrollment indicate that the decline in Anglo population is continuing. As of October 1979 there were 41,893 Anglo students, a decline in one year of 3,248 students or 7.2%.

The numbers are even more dramatic when those grades subject to mandatory student reassignment are examined. For example, in the northwest subdistrict grades 4 through 6 there was a decline of 47.56% of the Anglo student population from 3,592 to 1,883 in the three short years between

the scholastic population census used by the court in its order of 1976 and the scholastic population census as of November 14, 1978.¹ In the middle schools in the northwest subdistrict which were also reassigned by the district court, 49% of the Anglo students have disappeared during that period; the Court's order indicates 2,624 Anglo students should be in middle schools (grades 7 and 8), in fact only 1,339 were there as of November 14, 1978. In contrast, in the senior high schools (without student reassignment) in the northwest subdistrict, there was only a loss of 24.9% of the Anglo students. Obviously the lack of court ordered student assignment created a dramatic difference between grades 7 and 8 which lost 49% of the Anglo population on court ordered reassignment, and grades 9 to 12 a loss of 24.9% without court ordered student assignment. The numbers remain consistent in the other subdistricts of the Dallas Independent School District. In the northeast subdistrict grades 4 through 6 lost 1346 Anglo students, or 38.3% of the court's projected number. The middle schools, grades 7 through 8, with court ordered assignment, the district lost 1521 Anglo students, or 35% of the 2,334 estimated to be in the middle school. However, in senior high school, grades 9 through 12, where there was no court ordered student assignment, the loss was only 1,072 Anglo or 17.4% of the projected total of 6,168. Again about half the rate of loss compared to the court ordered student assignment plan.

Since children do not start at the high school level, and since high school children have siblings, it is by no means contended that the high school loss is not caused by the Court's orders, but clearly the loss is less.

Even more dramatic were the losses of those students proposed to be transported in connection with the plans.

¹ All declines are measured from projections in the District Court's opinion and appendices.

In the northwest subdistrict of 2,835 Anglo students to be transported under the Court's plan, only 1107 remain, a loss of 1,728 students, or 61% of those Anglo students who were supposed to be on busses. In the northeast subdistrict, 49% or 691 out of 1412 Anglo students disappeared who were supposed to be transported pursuant to the court's plan. In the southeast subdistrict (the only other subdistrict in which there was student transportation), the loss was 45% of the Anglo students.

The loss, however, is not limited to Anglos. 20% of the black students scheduled to be transported in all subdistricts are gone, and 12% of the Mexican-American students scheduled to be transported have disappeared.

Set out below is a table showing the student population of the high schools in the Dallas Independent School District by race as of November 14, 1978. These student bodies are in neighborhood school districts except for such changes as majority-minority transfers and magnet schools may occasion.

HIGH SCHOOLS							
School	Anglo		Black		M-A		Total
	No.	%	No.	%	No.	%	
<i>Northwest District</i>							
Hillcrest Complex ..	1298	78.62	297	17.99	31	1.88	1651
Thomas Jefferson....	967	58.32	403	24.31	262	15.80	1658
North Dallas.....	154	12.32	382	30.56	695	55.60	1250
Pinkston.....	17	.94	1493	82.35	290	16.00	1813
W. T. White.....	2215	90.22	109	4.44	92	3.75	2455
Metro North.....	50	26.46	125	66.14	14	7.41	189
Metro West.....	153	43.59	154	43.87	5	1.42	351
Transportation Magnet.....	73	26.55	158	57.45	43	15.64	275
<i>Northeast District</i>							
Bryan Adams.....	2598	85.97	157	5.20	209	6.92	3022
James Madison.....	6	.44	1336	98.60	11	.81	1355
Skyline Center.....	1832	51.74	1407	39.73	254	7.17	3541
Woodrow Wilson.....	660	46.91	305	21.68	425	30.21	1407
Health Professions ..	111	21.76	346	67.84	41	8.04	510

HIGH SCHOOLS — (Continued)

School	Anglo		Black		M-A		Total
	No.	%	No.	%	No.	%	
Southwest District							
Adamson	254	19.63	579	44.74	437	33.77	1294
David W. Carter	253	14.24	1447	81.43	73	4.11	1777
Kimball	1243	54.47	739	32.38	274	12.01	2282
Sunset	896	47.76	154	8.21	790	42.11	1876
Southeast District							
Lincoln	1	.09	1092	99.91	0	0	1093
Samuel	1403	74.79	344	18.34	120	6.40	1876
Grady Spruce	1203	54.46	725	32.82	274	12.40	2209
East Oak Cliff							
Roosevelt	5	.22	2278	99.35	10	.44	2293
South Oak-Cliff	7	.21	3390	99.50	10	.29	3407

Petitioner Curry, et al is unable to discern from a review of the high school population census what prevents these neighborhood schools with minority-majority transfer from being unitary schools. In assessing these schools it should be noted that all but three (Lincoln, Roosevelt and Pinkston) of the non-magnet schools began as all white schools. However, one thing is clear. Those schools in which the court has attempted to achieve racial balance, with only one exception, are minority isolated schools as defined by the Equal Educational Opportunity Act, 20 U.S.C. 1701, et seq. In the NAACP brief on p. 14, there are projected percentages which show eight middle schools of 50% less minority enrollment and one of more. In fact, there is only one middle school where minorities are not in a majority and in ten out of sixteen the schools are more than 60% minority.

The actions of the United States courts have already prevented meaningful integration in the Dallas Independent School District in those areas where it has adopted a man-

datory student assignment plan. Additional student assignment plans as demanded by the Fifth Circuit create an overwhelming inability by the School District to achieve anything like a racially integrated school.

Dallas is a sunbelt city enjoying an economic boom. Its unemployment rate is one of the lowest in the nation. As a central city, it is not a decaying, rotting, blighted area, but a vibrant, booming area. But ultimately a city cannot survive without children and without the amenity of a public school system. There are 32 public independent school districts ringing the Dallas Independent School District, including one residing wholly within it. Not one of those districts other than Dallas suffer from the indignities of court ordered student assignment. In 32 other school districts the traditional advertisement for a home "convenient to churches and schools" is a reality. The courts and the district may assign students to schools, but the decision of accepting that assignment is going to lie with parents. Dallas has been held out as a model to the nation of a city united to make the court ordered desegregation plan work. There were no pickets, no bombings, no rallies, no negatives. The problem was there were also no middle class students. These are not numbers that come from some sociologist's projections, these are actual numbers in the Dallas Independent School District. However, testimony put in evidence in this case indicates there is nothing unique about Dallas. In every school district meeting Dallas' criteria, a substantial minority population and suburban school districts surrounding the central city, the loss of Anglo students has been such that meaningful integration cannot exist. (See Curry Ex. 6, Appendix p. 260 et seq.)

Not only has the Anglo population declined in such a way as to prevent the meaningful integration of schools, but

the Anglo decline has really been a middle class or upper class decline. The testimony of Dr. William Webster, head of the Department of Research and Evaluation for the Dallas Independent School District, was the loss of Anglo students is really a loss of middle class and upper middle class student population in the Dallas Independent School District (Vol. VIII, page 192). It was his opinion that in addition to the Anglo loss we were also experiencing a loss of black middle class in the Dallas Independent School District. (Id.) After noting that study performance appeared to be the arena of debate on desegregation plans Dr. Webster testified "This approach is tantamount to fiddling while Rome burns. If a desegregation policy has as its principal observable effect, the resegregation of the public schools, whether or not a given group of students would have benefit from that policy is academic. Methods must be found to provide meaningful integrated experiences for school children while not upsetting the majority population to the point that population redistribution occurs. Only then can the effect of induced desegregation be meaningfully discussed and examined." (Vol. VIII, pp. 171-172).

Even Plaintiff witness Dr. Robert Crain's testimony was to the same resegregation result. Vol. VIII, p. 497-498. "What I said was if the school is designated predominantly black, then the desegregation plan is liable to be in trouble because a lot of white students aren't going to go. A lot of white students don't show up, so that's the problem."

This Court, if it chooses, can command the Dallas Independent School District to achieve racial balance in its schools. We suppose that if racial balance constitutes 5% of the Anglo students in each school in the district, and each school 95% minority, it can be achieved, because there are certain Anglo students who cannot escape the mandates

of the Court or the school system. But that is not what this Court is attempting to achieve nor is it what the Dallas Independent School District desires, nor is it what Curry believes is the best interest of any children. To order the District Court to achieve racial balance is like ordering the District Court and the Dallas Independent School District to cause the sea to retreat or the sun to stand still. The Court can command, but ultimately the people will decide.

Not only do the figures in every central city in the United States overwhelmingly show the failure of court ordered student reassignment to desegregate the systems and not only do such statistics show the overwhelming resegregation of the schools of the central cities, but the issue of to what purpose stares as a stark question in the eyes of any honest examiner. From the plaintiffs own brief in this Court comes the startling findings of plaintiffs' own witnesses that "Of twelve studies of desegregation at the junior high school and high school levels five show negative effects" page 86, footnote 42. "... only 9 of the 21 cases of desegregation in grades 3 or 4 showed positive results" page 86, footnote 42. The fact is that testimony by Armor, Coleman, Estes, Glaser, Felice and Webster, and the testimony by each of the educators and experts studying the issue such as Nancy St. John, overwhelmingly indicate that no positive results flow.

Plaintiff's witness, Dr. Robert Crain, testified at Vol. VIII, p. 447:

"No, I think the best single compendium is a book done by Nancy St. John called *School Desegregation — Outcomes for Children . . .*"

and at p. 502 of Vol. VIII:

"However, I should point out that Nancy St. John who did this review of the work looks at the same set of data and concludes that there is no evidence here that black students benefitted from desegregation. And its likely — she goes further and she finds in one chapter saying on the basis of her review of the evidence she would be opposed to massive busing and large scale busing, I think that's her words, because there is no evidence that the students benefit."

Dr. Webster testified as a result of studies conducted in the Dallas schools that:

(Vol. VIII, p. 179, 1. 13-15)

"A. . . . Nonbused black students had more positive attitudes towards school than did bused black students.

"Q. All right. With respect to whether the black students attended a bused from rather than a bused to school, what was the result of your study?

"A. Black students attending bused from schools were more positive in attitudes than were black students that attended bused to schools."

(Vol. VIII, p. 180, 1. 7-12)

"A. Black students in mostly white classes had a negative attitude towards school while those in mostly black classes had a positive attitude. Similarly, white students in mostly black classes had a negative attitude towards school while white students in mostly white classes had a positive attitude."

(Vol. VIII, p. 182, 1. 9-16)

"Q. All right, now, putting it in simple laymen's terms, this would indicate that the students that remained in the predominantly minority schools had a more positive attitude towards white students than those that were either in attendance at or were bused to what had been more predominantly or majority white schools, is that correct?

"A. It would suggest that, yes."

(Vol. VIII, p. 182, 1. 20-25)

"A. White students in mostly white classes had positive attitudes toward black students while white students in mostly black classes had a slightly negative attitude toward black students. So there was a significant difference between the class composition relative to attitudes toward black students among white students."

About Webster and his department, the testimony was as follows:

(Vol. VIII, p. 197, 1. 15 to p. 198, 1. 19)

"Q. Has the Research and Evaluation Department of the Dallas Independent School District received any recognition?

"A. Yes, I think it is probably generally recognized as the best Department of Research and Evaluation in the country. It has had outside auditors come in to audit the department on several different occasions, the most noteworthy of which was Dan Stufflebeam, who is one of the foremost evaluation therapists in the country.

"THE COURT: Who is it?

"THE WITNESS: Dan Stufflebeam who is one of the foremost evaluation therapists in the country. He was brought in as part of the Chase study last year and basically concluded that it was the best Department of Research and Evaluation in the country. Do you want me to read that quote into the record?

"Q. If you would like, you certainly may.

"A. In arriving — this is quoted from the report by Dan Stufflebeam. 'In arriving at an overall judgment of the evaluation in research work done in the DISD I compared what I saw in Dallas with what I observed in my past studies of other evaluation and research systems in school districts, in state education depart-

ments, federal agencies, research and development agencies and private companies. Based on these comparisons I am convinced that the DISD Research and Evaluation system is considerably stronger than any other I have observed.'"

The testimony of Dr. John W. Letson, former Superintendent of Schools of Atlanta, Georgia, testified about the transportation of the Atlanta schools to virtually an all black system. His testimony was that the loss of community support was the most tragic loss of all in the Atlanta school system (Vol. VIII, page 51). That loss of community support ultimately results in a public school system which cannot adequately function. The testimony of Dr. O. Z. Stevens of the Memphis School District in this proceeding about the difficulties of the school system after its loss of white students as a result of mandatory student assignment is as follows:

(Vol. VIII, p. 148, 1.13 to p. 149, 1.11)

"A. I think it's, you know, from all of this, there has been kind of a spinoff. I can remember five years ago when the preparation of a budget and the presentation of it to the City Council was sort of a formality. There was always the political rhetoric of the Board of Education has a little bit too much fat in its budget and you pare it back and it's a surface kind of concern. Most of it rhetoric for political purposes. We never had any difficulty. If we needed an eleven cent tax increase we got an eleven cent tax increase. We used to, 1970-'71, for example, our annual capital improvement budget would be between twelve and fifteen million dollars a year, that's the bonds that we were selling. Our Board of Education for the past three months has been wrestling with all sorts of internal strife over the approval of a three million dollars bond issue which even if the Board approves and finally gets

reconciled has about as much chance of being approved by the City Council as if it were eleven. You know, it's the attitude throughout Memphis as it relates to the public school system. Not one more penny for the public school system. It was reflected in a referendum for this past summer for a quarter cent increase in the sales tax for education, you know, it lost ten to one."

Obviously this Court is familiar with the further manifestations of school districts that cannot raise funds. The failure to raise adequate revenue is followed by teacher strikes, followed by the ultimate abandonment of any attempt at quality education. The final losers in all of this are the minorities which this Court is attempting to help.

CONCLUSION

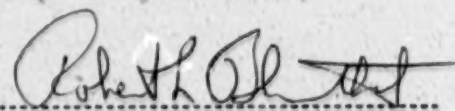
In reading the briefs filed herein by the Plaintiffs and the NAACP and the Justice Department, and in reading many of the past opinions of the Circuit Courts and indeed this Court, one is struck by the continual reference to long ago events by long departed school boards. Perhaps inappropriately in such a solemn brief Curry is reminded of the opening lines of Edgar Allen Poe's short story, "A Cask of Amontillado":

"A thousand injuries of Fortunato I have borne as I best could; but when he ventured upon insult, I vowed revenge."

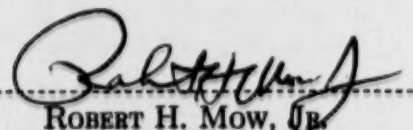
The Court will recall Fortunato's final words, chained in the wine cellar, as the last brick was placed in its position entombing him, "For the love of God, Montresor." The United States Supreme Court seems to say that the five words "Equal Protection of the Law" require that white children, because of their race, be transported to remote sections of the school district to attend schools to achieve

racial balance, and that black children, because of their race, be transported to remote sections of the school district to achieve racial balance. Constitutional amendment to change this tortured interpretation of those words, if not impossible, is extraordinarily difficult. One can only cry out in defense of the school systems in the central cities of America, "Mercy."

Respectfully submitted,



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Dated:

10/23/79

PROOF OF SERVICE

We, Robert L. Blumenthal and Robert H. Mow, Jr., attorneys for Petitioners Curry et al. herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on the 23 day of October 1979, we served three copies of the foregoing Brief upon the following Counsel for Respondents, Counsel for other Petitioners, Counsel for Amicus Curiae, and the Respondent Pro Se:

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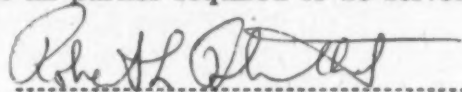
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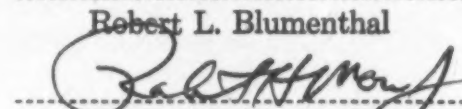
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by mailing same to such Counsel and Respondent pro se at their respective addresses and depositing the same in a United States mail box in an envelope addressed to such addresses with first class postage prepaid.

We further certify that all parties required to be served have been served.



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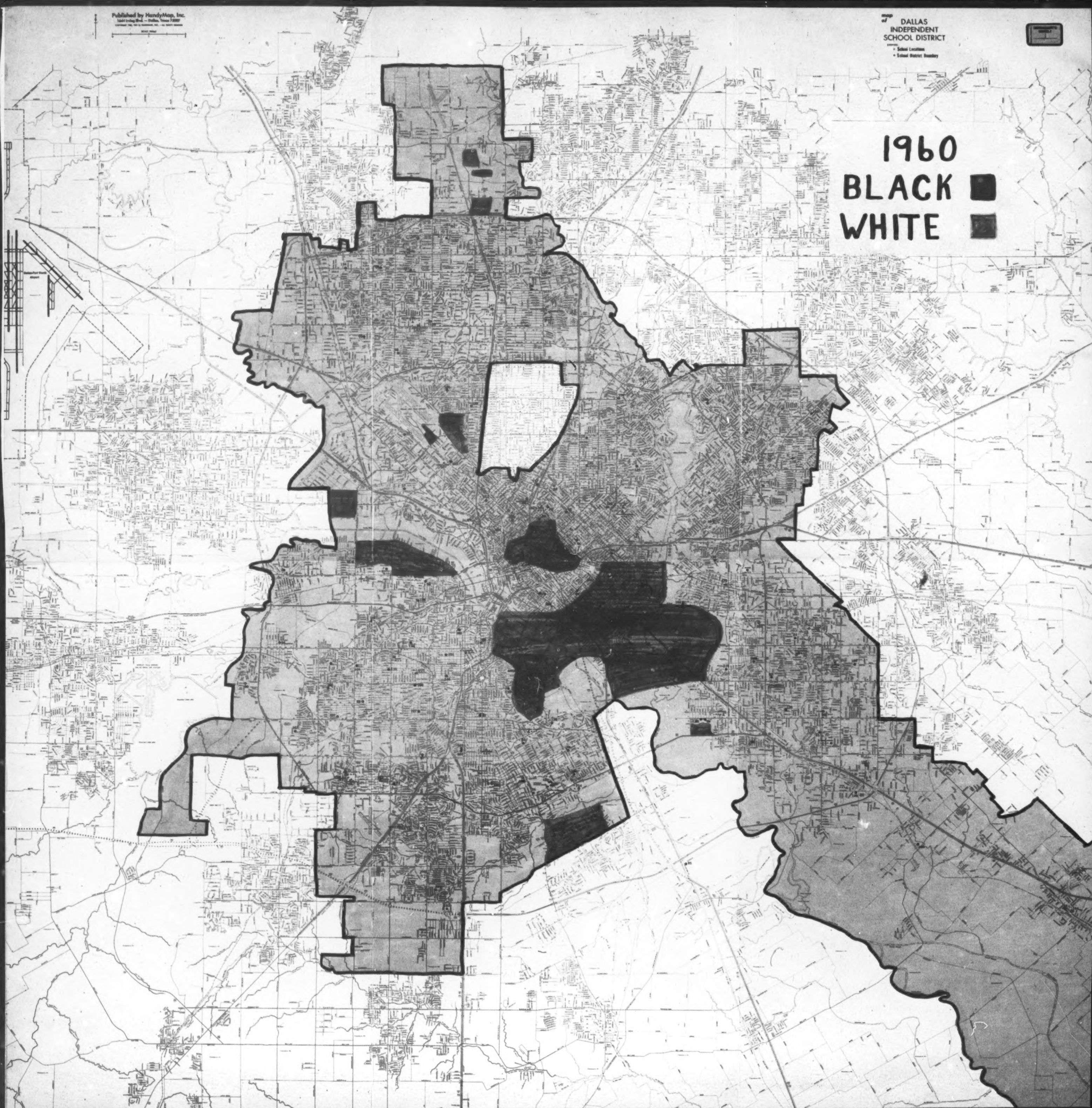
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map of DALLAS
INDEPENDENT
SCHOOL DISTRICT
• School Location
• School District Boundary

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map of DALLAS INDEPENDENT SCHOOL DISTRICT
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ENROLLMENT PATTERNS

